SUPREME COURT OF THE UNITED STATES.

No. 413.

THE CONNELLSVILLE AND SOUTHERN PENNSYLVANIA RAILWAY COMPANY, THE PITTSBURG AND CONNELLSVILLE RAILROAD COMPANY, AND OTHERS, CITIZENS OF THE STATE OF PENNSYLVANIA, APPELLANTS,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE, A CORPORATION OF THE STATE OF MARYLAND, AND A CITIZEN OF SAID STATE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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1 Among the rolls, records, and judicial proceedings of the circuit court of the United States for the western district of Penn'a may be found the following words and figures, viz:

THE MAYOR AND CITY COUNCILS OF BALTIMORE, a corporation of the State of Maryland, and a citizen of said State,
vs.
THE CONNELLSVILLE & SOUTHERN PENN'A Railway Co., the Pittsburgh & Connellsville Railroad Co., and others, citizens of the State of Pennsylvania.

No. 7 of May term, 1865, in equity.

2 Be it remembered that heretofore, to wit, on the 6th day of March, in the year of our Lord one thousand eight hundred and sixty-five, come the complainants by their solicitors and file the following bill of complaint:

Copy of bill.

3 THE MAYOR AND CITY COUNCIL OF Baltimore, a corporation of the State of Maryland, and a citizen of the said State,
versus
THE CONNELLSVILLE & SOUTHERN PENNsylvania Railway Company, the Pittsburgh & Connellsville Railroad Company, and others, citizens of the State of Penn'a.

To the honorable the judges of the circuit court of the United States, for the western district of Pennsylvania, sitting in equity:

The mayor and city councils of Baltimore, a corporation of the State of Maryland, and a citizen of said State, bring this bill of complaint against the Connellsville and Southern Pennsylvania Railway Company, and John A. Wright, Thomas A. Scott, Josiah Bacon, John M. Kennedy, Wistar Morris, Edward C. Knight, S. L. Russell, George W. Cass, D. R. Davidson, D. E. Small, J. D. Roddy, Ashbel Greene, A. K. McClure, the Pittsburgh & Connellsville Railroad Company, and Andrew G. Curtin, citizens of the State of Pennsylvania.

And thereupon complainants say that the said the Pittsburgh and Connellsville Railroad Company were duly created a body politic by an act of the general assembly of the State of Pennsylvania, approved the 3d day of April, 1837, with power to construct a railroad from the city of Pittsburgh to the town of Connellsville, and that subsequently, by an act approved the 18th day of April, A. D. 1843, the said company were authorized to extend their road beyond Connellsville to the dividing line between the States of Pennsylvania and

Maryland; that by an act of the general assembly of the State of Maryland, passed at January session, A. D. 1853, the said company were duly incorporated as a body politic within the State of Maryland, and authorized to continue their road from the dividing line between the States of Maryland and Pennsylvania to the town of Cumberland, in the State of Maryland, there to connect with the Baltimore and Ohio railroad, and the Chesapeake and Ohio canal.

Your orators further state, that while the charter of the Pittsburgh and Connellsville Railroad Company—granted in 1837 by the State of Pennsylvania—was limited to the construction of a mere local work between the two places named in the title, yet, when it was authorized to extend its work to the State line by the act of 1843, and when, in 1853, the legislature of Maryland, responding to the invitation of the last-named act of Pennsylvania, and after reciting the Pennsylvania act, incorporated said company, the two companies became authorized, not merely to develop the resources of the country through which the road to be made by them was designed to pass, but also, and chiefly, to provide a great and adequate thoroughfare between the cities of Washington, Baltimore, and Pittsburgh, and to thus create a public work of importance to the entire nation.

Your orators further state, that in furtherance of these objects the legislature of Pennsylvania authorized, by acts passed at various sessions, the city of Pittsburgh, the county of Allegheny, the boroughs of McKeesport and Connellsville, to subscribe for stock in the Pittsburgh and Connellsville Railroad Company, so as aforesaid incorporated by said legislature; and that the legislature of Maryland, by an act passed on the 25th May, 1853, authorized the city of Baltimore to give such aid to the construction of the railroad between Pittsburgh and Cumberland as the said city might deem expedient, on condition that the Pittsburgh and Connellsville Railroad Company should pay the interest on said stock or bonds until the time when the said railroad should be completed and opened from Pittsburgh, in Pennsylvania, to Cumberland, in Maryland, or by a guarantee of the bonds of the said railroad company; and that by another act of the same legislature, passed on the 27th February, 1856, the town of Cumberland was authorized to subscribe for, and hold shares in, the Pittsburgh and Connellsville Railroad Company, not exceeding in amount three hundred thousand dollars, on condition, among others, that the railway designed by the company, beginning at Pittsburgh and terminating at Cumberland, should have its eastern or Maryland terminus within the existing corporate limits of the city of Cumberland; and also that before the said subscription should be made, the said railroad company and the said city should formally assent to the conditions of said act, which was done, and the said town subscribed for shares to the amount of $200,000 accordingly.

And your orators further state, that in pursuance of the authority thus granted, and in view of the joint acts of the States of Pennsylvania and Maryland, the city of Pittsburgh, the county of Allegheny, the boroughs of McKeesport and Connellsville, did in fact subscribe and pay for large amounts of stock in the said company, amounting in the aggregate to the sum of dollars.

4 And your orators further state that, by the aid of the moneys raised from these subscriptions and other sources, the Pittsburgh and Connellsville Railroad Company, in Pennsylvania, were enabled to begin and carry on the construction of their road; that various difficulties and causes of delay, not now necessary for your orators to specify, interfered with the completion of the road; but that, from time to time, at its various sessions, the legislature of Pennsylvania continued to recognize the existence of the said company, and to encourage its efforts by the passage of numerous acts having in view the welfare of the road and the importance of its completion.

And your orators crave leave, at the hearing, to refer to said several acts of assembly, and particularly to the act of assembly approved January 22d, 1857, and the act of assembly approved April 11th, 1863, and the act of assembly approved 1863, the acts approved the 3d day of March, the 6th day of April, and the 19th day of April, 1854.

And your orators further state that, by an act approved the 11th day of April, 1856, the legislature of Pennsylvania declared that any defect or irregularity in the proceedings of the board of directors of the Pittsburgh and Connellsville Railroad Company, or failure to comply with the requisitions of its acts of incorporation and their supplements, were thereby remedied and supplied; and that the charter of incorporation of said company should not be affected or invalidated in consequence of any omission or neglect by the commissioners or board of directors to comply fully with its requirements.—(See Pamphlet Laws, 1856, p. 323.)

And your orators further state that when the legislature of Pennsylvania had thus declared that, whatever might have been its rights up to that time under the 20th section of the original charter in regard to the misuse or abuse of any of the privileges thereby conferred, they were waived and abandoned, the city of Baltimore afterwards, that is to say, on the 10th of June, 1856, trusting to the good faith of the State of Pennsylvania in all its said various acts of assembly, and especially the act last aforesaid, agreed to loan to the said company bonds of the said city to the amount of one million of dollars, and in security for the payment thereof by the said company took a mortgage, dated August 4th, 1856, and a true copy whereof is hereto annexed and made part hereof, duly executed, upon all its real and personal estate, rights and franchises, road or roads, tolls and revenue; that the said loan of bonds of the city of Baltimore was a substitution of the bonds of the said company to that amount, guaranteed by the said city under an ordinance passed June 24, 1853, and accepted by the said company, providing for the commencement of the work simultaneously at Pittsburgh and Cumberland, and requiring that for every two miles of road completed east of Pittsburgh there should be completed one mile from Cumberland westward; that the said company finding the bonds so guaranteed unavailable, the ordinance of 1856 was passed, leaving it to the com-

missioners of finance of the said city to provide for the application of the proceeds in such manner as to them shall seem most conducive to the early completion of the road; that the said commissioners, with full authority, if they pleased, to insist on the requirements of the ordinance of 1853, confined themselves to a mere exchange of one security for the other, relying on the good faith of the Pennsylvania company and of the State of Pennsylvania, and believing that up to that time all right of interference on the part of the latter had been waived; and believing that no cause for interference on the ground of misuse or abuse would be permitted by the company to arise during the construction of the entire line from Pittsburgh to Cumberland.

And your orators further show that they are advised and believe that on the 18th of July, 1856, at about the time of the passage of the Baltimore ordinance of that year, and when, owing to the legislation of the State of Pennsylvania, the said company was free from all charge of misuse or abuse, there were but twenty-five miles of the said road in operation from Connellsville to West Newton; that the rolling stock consisted of but two locomotives, two passenger cars, and a few freight cars; that there was a floating debt of six hundred thousand dollars; that the road was dependent for communication with the city of Pittsburgh upon the Pennsylvania Central railroad, with which it had a connection at Turtle creek, and that the revenue was barely sufficient to defray the actual working expenses; that hardly had the means, obtained as aforesaid from the city of Baltimore, under the ordinance of 1856, enabled the company to resume operations before the commercial troubles of 1857 began, and affected the operations of the said company, in common with similar undertakings throughout the country; and that scarcely had these subsided when the political troubles, which culminated in the present war in 1861, interfered to prostrate for a season every species of industry; and yet your orators are advised and believe that, up to the time of the action of the legislature of Pennsylvania, in 1864, presently to be spoken of, the said company had, without affording the smallest ground for the charge of misuse or abuse, proceeded diligently, and often under the most adverse circumstances, in the prosecution of the work between Pittsburgh and Cumberland, until they have completed sixty miles of their road from Pittsburgh eastward; have leased a road in connection therewith of twelve miles in length, terminating at Uniontown; are working the whole seventy-two miles with an adequate rolling stock of twelve locomotives, passenger, and freight cars; had constructed all the necessary switches, turn-outs, water-stations, and appurtenances; had surveyed and placed in a condition to let the whole work in Pennsylvania; had paid off the floating debt; had done one-half of the very heavy work of a tunnel through the ridge of the Alleghenies, dividing the waters of the Potomac and Ohio; had built a road into the city of Pittsburgh ten miles in length, which make the said company independent of the Pennsylvania Central railroad; had secured the right of way to
5 the Maryland line, had a gross revenue for 1863 of $215,000, and

had $95,000 clear of all expenses, to be applied to the further construction of the work, or actually already expended on it. In addition to this, the said company had secured the co-operation of the Baltimore and Ohio Railroad Company, with whose road the Pittsburgh and Connellsville railroad was to unite at Cumberland, and which had formally agreed to furnish additional capital to the extent of one million dollars, and was prepared to advance, at once, as much as would be wanted to carry on the work of immediate construction, at the rate of $100,000 a month, and would have advanced the same, notwithstanding the prior mortgage held by the city of Baltimore, but for the passage of the act of the legislature of Pennsylvania, presently to be referred to; and your orators are advised and believe that the whole capital required to complete and stock the road between Pittsburgh and Cumberland, under the two charters, could have been obtained upon a mortgage, which the city of Baltimore was willing to make, and had indeed provided for making a first mortgage of the road and its appurtenances, by a waiver of its priority under the ordinance of 1856.

And your orators further state, that in addition to the aid thus actually given and offered by the city of Baltimore, and the Baltimore and Ohio Railroad Company, to the Pittsburgh and Connellsville Railroad Company, the said city, by an ordinance passed on the 21st April, 1858, agreed to waive the mortgage which it held, as aforesaid, so far as to enable the said company to borrow on the ten miles of road next to the city of Pittsburgh $400,000, on a pledge thereof by a first mortgage, to assist in constructing it. And afterwards, when the said company, suffering from the derangements of the present war, was unable to meet certain claims, the said city agreed to lend the proceeds of a particular fund for the special emergency—all which matters your orators now refer to, not merely to show how, relying on the good faith of the State of Pennsylvania, the said city of Baltimore was willing to lend its means to be expended within a neighboring State, but also to show how the derangements of 1857 and 1861, and their consequences, affected the said company, and its struggles to meet and overcome them; and your orators charge that the matters and things herein set forth, in connection with the actings and doings of the said Pittsburgh and Connellsville Railroad Company of Pennsylvania, since 1856, all of which your orators hold themselves in readiness to prove, along with many other matters to the same effect, which it would only encumber this bill of complaint to state at large, are amply sufficient to rebut any charge of misuse or abuse that can be brought against the P. & C. R. R. Co. of Pennsylvania, under the 20th section of the charter of 1837, even admitting it to be applicable, in the present condition of the two companies of Pennsylvania and Maryland.

And your orators state that, except for the wrongs and injuries hereinafter complained of, the said railroad from Connellsville to Cumberland would probably have been under contract for completion at the present time, and the object and aim of the various acts of assembly of the States of Maryland and Pennsylvania in a fair way of

being attained at an early day. But your orators state that the legislature of Pennsylvania, by an act passed the day of April, 1864, declared all the rights, powers, privileges, and franchises of the Pittsburgh and Connellsville Railroad Company of Pennsylvania, so far as they authorized the construction of any line of railroad southwardly or eastwardly from Connellsville, revoked and resumed by the Commonwealth of Pennsylvania; and, by a further act passed the day of April, 1864, conferred the said rights, privileges, and franchises upon a new corporation thereby created.

And your orators further state that it is provided in and by the first section of the said act revoking as aforesaid the rights and franchises of the Pittsburgh and Connellsville Railroad Company, that the governor of the Commonwealth of Pennsylvania shall appoint three persons to appraise and value the actual expenditures made in respect to any work done or constructed upon the line of the said company east and south of Connellsville; and that it is provided, in and by the 4th section of the said act incorporating the Connellsville and Southern Pennsylvania Railway Company, that the said last-mentioned company shall pay to the Pittsburgh and Connellsville Railroad Company whatever sum shall be named by the said appraisers as due on account of said expenditures made by the Pittsburgh and Connellsville Railroad Company on their line east and south of Connellsville; which said line appears in a map of the route of the P. & C. railroad, hereto appended and made part hereof.

And your orators further state, that while they do not deny the right of the legislature of Pennsylvania to create as many corporations as it sees fit, even for the construction of similar works between the same termini, and admit, that if the said act of assembly, incorporating the new company, stood alone, it would not be for your orators to complain, without actual trespass on its part, yet the connection between its act of incorporation and the law revoking the charter of the Pittsburgh and Connellsville Railroad Company of Pennsylvania, east of Connellsville, and the fact that it may become the assignee of the rights heretofore acquired by the said P. & C. R. R. Company, and pledged to your orators, make it a proper party to any proceedings having in view the testing of the constitutionality of the legislation, by which the rights of the Pittsburgh and Connellsville Railroad Company are or may be diminished or impaired for its benefit; and that this must be the case whether it avails duly of such legislation in its favor or not.

And your orators further state, that the said acts of assembly, so as aforesaid passed by the legislature of Pennsylvania, at its session in April, 1864, were not introduced and passed by the said legislature with the assent and approval of any of the parties in-
6 terested in the Pittsburgh and Connellsville railroad, either as completed to Connellsville or projected and partly constructed to Cumberland; and your orators further state, that the allegations contained in the preamble of the said act revoking the rights and franchises of the Pittsburgh and Connellsville Railroad Company, whereby the said company are charged with having misused

and abused the powers conferred upon them, are untrue and without foundation in fact, and that the said legislature, in seeming to approve said allegations, by passing said act, were imposed upon and deceived by interested parties, who desired to possess for themselves the rights and privileges theretofore granted by the said legislature to the said Pittsburgh and Connellsville Railroad Company.

And your orators further state that the said act, undertaking to revoke the rights and franchises previously granted and confirmed unto the Pittsburgh and Connellsville Railroad Company, and the said act incorporating the Connellsville and Southern Pennsylvania Railway Company, so far as it undertakes to confer upon the corporation thereby created the rights, franchises, and property of the Pittsburgh and Connellsville Railroad Company, are utterly void, because they are intended to affect and destroy the vested rights of the complainants and of the creditors and stockholders of the Pittsburgh and Connellsville Railroad Company under the acts of incorporation and their supplements, and because they are repugnant to the provisions of the 10th section of the 1st article of the Constitution of the United States, and to the provisions of the 10th section of the 9th article of the constitution of Pennsylvania.

And your orators further state that even if the causes and grounds of forfeiture alleged in the preamble of the said act of revocation ever existed, the same have been waived and abandoned by the said act of April 11th, 1856, hereinbefore mentioned, and that the Commonwealth of Pennsylvania is equitably estopped from alleging the said grounds or causes of forfeiture against the Pittsburgh and Connellsville Railroad Company, or against your complainants and the creditors and stockholders in said corporation.

And your orators further state that they are advised and believe that even admitting that the rights reserved to the State in the 20th section of the act of incorporation of 1837 could be exercised by the legislature of Pennsylvania after the incorporation of your orators, or after the passage of the act of April 11, 1856, yet that any repealing act could at least afford only prima facie evidence of either misuse or abuse; that the legislature proceeded without specific accusation and without opportunity to answer, without confronting the parties with the witnesses, or anything that could be called a hearing or trial; that it would be eminently inequitable and unjust to hold that a legislative act, under these circumstances, is like a judicial sentence, conclusive of every fact that ought to have been found before it passed. Even if it could be regarded as the award of an umpire, it could, as your orators are advised, be set aside for any mistake of law or fact, and that the constitutional power of the legislature, if it exists at all, depends on matters of fact which the party affected ought to have opportunity of showing not to be true, as charged; and forasmuch as this review can best be had by instituting proceedings against those who have acted, or are about to act, or who have the power to act, on the assumption of the absolute validity of the repealing law in a court of equity, your orators on this occasion ask your honorable court that the validity of the repealing act

aforesaid may be made the subject of a judicial inquiry, in the course of which your orators may have the opportunity of proving that the Pittsburgh and Connellsville Railroad Company of Pennsylvania have neither misused nor abused the privileges, or any of them, conferred by the original charter of 1837.

And your orators further state that the said the Connellsville and Southern Pennsylvania Railway Company have been organized under their charter of incorporation, thereby accepting the rights, privileges, and franchises taken from the Pittsburgh and Connellsville Railroad Company and conferred upon said the Connellsville and Southern Pennsylvania Railway Company by the said acts of assembly of the State of Pennsylvania hereinbefore complained of.

And your orators state that the said the Connellsville and Southern Pennsylvania Railway Company, unless restrained by the decree of this honorable court, will proceed to take possession of the route and road of Pittsburgh and Connellsville Railroad Company, between Connellsville and the dividing line between the States of Maryland and Pennsylvania, and to appropriate to themselves the property of the Pittsburgh and Connellsville Railroad Company south and east of Connellsville, and to pretend to exercise and control the rights, privileges, and franchises heretofore granted and confirmed unto the Pittsburgh and Connellsville Railroad Company by their act of incorporation and its supplements.

And your orators state that whether the said the Connellsville and Southern Pennsylvania Railroad Company proceed at once to take possession of the property of the Pittsburgh and Connellsville Railroad Company or not, or to openly assert their title to the rights and franchises of the Pittsburgh and Connellsville Railroad Company or not, or whether the governor of Pennsylvania at once appoints, under the provisions of the act complained of, commissioners to value the property of said the Pittsburgh and Connellsville Railroad Company or not, the fact that they have, under said acts, the right and authority to do so, works a great and remediless injury to your orators and the Pittsburgh and Connellsville Railroad Company, inasmuch as the alleged existence of such right and authority on the part of the said the Connellsville and Southern Pennsylvania Railway Company and of the governor of Pennsylvania deprives the Pittsburgh and Connellsville Railroad Company of the practical power to make contracts for the completion of their road, deters the Baltimore and Ohio Railroad Company and other friends of the enterprise from advancing funds, as they otherwise would do, for the construction of the road between Connellsville and the dividing line between Maryland and Pennsylvania, and that thus your orators are pre-

7 vented from receiving the additional value to their pledge which would have been bestowed by the completion of said road, which additional value was contemplated when said pledge was taken—and from enjoying the benefits of the completion of the entire road—the great aim and object of the city of Baltimore in advancing capital, as aforesaid, to aid in constructing a railroad in the State of Pennsylvania.

To the end, therefore, that the said respondents may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths of the said John A. Wright, Thomas A. Scott, Josiah Bacon, John M. Kennedy, Wistar Morris, Edward C. Knight, S. L. Russell, George W. Cass, D. R. Davidson, D. E. Small, J. D. Roddy, Ashbel Greene, and A. K. McClure, citizens of the State of Pennsylvania, and according to the best of their knowledge, information, and belief, full, true, and direct answer make to the following interrogatories:

1st. Whether the corporators named in the act of the general assembly of Pennsylvania, passed in April, 1864, and incorporating the Connellsville and Southern Pennsylvania Railway Company, have accepted the charter thereby created?

2d. Whether or not the said corporators have opened books for the subscription of capital stock? and if so, when and where, and how much has been paid in on account of said subscription?

3d. Whether or not the subscribers—if there be such—to the stock have organized, by the election of officers? and if so, what are the names of the directors, and is not John A. Wright president of the board of directors?

And that the said act repealing the charter of the Pittsburgh and Connellsville Railroad Company, and such portions of the said act incorporating the Connellsville and Southern Pennsylvania Railway Company as bestow upon the said last-mentioned company the rights and franchises of the Pittsburgh and Connellsville Railroad Company, may be declared null and void, for want of an antecedent judicial investigation into the alleged fact of abuse or misuse by the said company of its charter, rights, and privileges; and should your honors not grant said relief, that the alleged fact of abuse or misuse of the privileges, or any of them, granted to the Pittsburgh and Connellsville Railroad Company, by the charter thereof, may be now judicially inquired into in a way to afford your orators an opportunity of showing that the said the Pittsburgh and Connellsville Railroad Company have used the greatest diligence in prosecuting their work, without either abuse or misuse of the privileges, or any of them, conferred upon them; and that the action of the legislature of Pennsylvania, annulling their charter south and east of Connellsville, may be declared null and void.

And that the said the Connellsville and Southern Pennsylvania Railway Company may be restrained, by an injunction issuing out of this honorable court, from taking possession of, or in anywise interfering with, the route and road and rights or franchises of the Pittsburgh and Connellsville Railroad Company, or from pretending or asserting any right or title thereto, and from instituting any action at law for the recovery of the possession of the route and road of the Pittsburgh and Connellsville Railroad Company, or any part thereof; and that the said Andrew G. Curtin, governor of the Commonwealth of Pennsylvania, may be restrained, by an injunction issuing out of this court, from appointing commissioners to value the property of the Pittsburgh and Connellsville Railroad Company; and that the said

the Pittsburgh and Connellsville Railroad Company may be restrained from in anywise accepting or ratifying the said acts of assembly hereinbefore complained of; and that your orators may have such other and further relief as the circumstances of their case may require and to your honors shall seem meet.

May it please your honors to grant to your orators a writ of subpœna, to be directed to the Connellsville and Southern Pennsylvania Railway Company, John A. Wright, Thomas A. Scott, Josiah Bacon, John M. Kennedy, Wistar Morris, Edward C. Knight, S. L. Russell, George W. Cass, D. R. Davidson, D. E. Small, J. D. Roddy, Ashbel Greene, A. K. McClure, citizens of the State of Pennsylvania, Hon. Andrew G. Curtin, governor of Pennsylvania, and the Pittsburgh and Connellsville Railroad Company, commanding them, and each of them, to appear and answer unto this bill, under a certain penalty therein named, and to stand to, perform, and abide such order and decision therein as to your honors shall seem meet; and your orators will ever pray, &c.

WILLIAM PRICE,
J. H. B. LATROBE,
GEO. SHIRAS, JR.,
REVERDY JOHNSON,
Solicitors for Complainants.

8 And afterwards, to wit, April 29th, 1865, comes R. T. Hunt, esq'r., solicitor for the Pittsburgh and Connellsville Railroad Company, and files the following answer:

(Copy of answer annexed.)

And afterwards, to wit, May 9th, 1865, comes the respondents, by their counsel, and files the following pleas and demurrer:

(Copy of pleas and demurrer annexed.)

9 And afterwards, to wit, May 17th, 1865, the complainants, by their solicitors, comes and files the following replication:

(Copy of replication annexed.)

10 In the circuit court of the United States for the western district of Pennsylvania, in equity.

THE MAYOR AND CITY COUNCILS OF BALTIMORE, a corporation of the State of Maryland, and a citizen of said State, *vs.* THE CONNELLSVILLE & SOUTHERN PENN'A RAILway Company, the Pittsburgh & Connellsville Railroad Company, and other citizens of the State of Pennsylvania.	No. 7 of May term, 1865.
THE MAYOR AND CITY COUNCILS OF BALTIMORE *vs.* THE CONN. & SOUTH. PENN'A R. W. CO. *et. al.*	

The Pittsburgh and Connellsville Railroad Company, one of the

respondents, for answer to the said bill of complaint, by R. T. Hunt, their solicitor, says that the said respondent has no interest in the legislation complained of in said bill; that said acts of assembly were passed without notice to this respondent, and without opportunity to be heard, and that no acts in the way of abuse or misuse of their chartered privileges have been committed by this company, respondent, and that there is no reason why the relief prayed for in
11 said bill of complaint should not be granted; and further answers not.

THE PITTS. & CONN. R. R. CO.

Witness the corporate seal of said company, duly attested by—
Attest: JNO. H. PAGE, JR.,
Secretary and Treasurer.

In the circuit court of the United States for the western district of Pennsylvania, at Pittsburgh, in equity.

THE MAYOR AND CITY COUNCILS OF BALTIMORE, &c.,
vs.
THE CONNELLSVILLE & SOUTHERN PENN'A R. W. Co., Jno. A. Wright *et als.*, the Pittsburgh & Connellsville R. R. Co., and Andrew G. Curtin. } No. 7, May T., 1865.

The joint and several plea of the Connellsville and Southern Pennsylvania Railway Company and of John A. Wright, Thomas A. Scott, Josiah Bacon, John M. Kennedy, Wistar Morris, Edward C. Knight, S. L. Russell, George W. Cass, D. R. Davidson, D. E. Small, J. D. Rody, Ashbel Greene, and A. K. McClure, defendants, to the bill of complaint of the mayor and city councils of Baltimore, complainants.

These defendants, by protestation, not confessing or acknowledging to be true all or any of the matters and things in said complainant's bill contained, in manner and form as the same are therein set forth and alleged, do plead thereunto, and for plea say:

That the Pittsburgh and Connellsville Railroad Company, named in said bill, did, as of May term, 1865, to wit, on the 16th day of November, 1864, exhibit and file in this honorable court its bill of complaint against the said defendants now here pleading, hereby praying, amongst other things, "that the said respondents and their agents might be restrained by an injunction issuing out of this
12 honorable court from taking possession of, or in anywise interfering with, the route and road of the Pittsburgh and Connellsville Railroad Company, or from asserting or pretending any right or title to the route and road of the said the P. & C. R. R. Company, or to the rights, privileges, and franchises heretofore possessed by the said the P. & C. R. R. Company, and also from instituting or proceeding in any action at law for the recovery of the possession of the said route or road of the P. & C. R. R. Company,

or any part thereof; and that the fact of misuse or abuse of the privileges, or any of them, granted to the P. & C. R. R. Company of Pennsylvania by the charter thereof, according to its true meaning, may be judicially inquired into, in a way to afford you orators (the said Pittsburgh and Connellsville R. R. Company) an opportunity of showing that the *the* P. & C. R. R. Company of Pennsylvania have used the greatest diligence in prosecuting their work, without either misuse or abuse of the privileges, or any of them, conferred upon them; and that the action of the legislature of Pennsylvania annulling their charter south and east of Connellsville may be declared null and void; and that your orators may have such other and further relief, &c.

And these defendants for plea further say that they put in their demurrer, plea, and answer to the several parts of said bill, in and to which said complainant joined and replied—which suit is now depending in this honorable court. And these defendants do aver that the said bill now here exhibited against the said defendants and others, by the complainants therein, is for the same matters as the bill before exhibited by the said the Pittsburgh and Connellsville Railroad Company against these defendants, to which these defendants have appeared, and have demurred, pleaded, and answered, and in and to which said P. & C. R. R. Company have joined and replied, and which suit is still depending and undetermined. And therefore these defendants do plead the said former bill and issues thereon, in
13 bar to the said complainants' new bill filed against them, and humbly pray the judgment of this honorable court whether they shall be compelled to make any further or other answer thereto. And these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

We who are of counsel for the defendants who plead the foregoing plea do certify that in our opinion it is well founded in point of law; that it is true in point of fact, and is not interposed for delay.

HAMILTON & ACHESON.
JAMES VEECH.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

George P. Hamilton, one of the counsel of the defendants who plead the foregoing plea, on his solemn oath deposeth and saith that it is not interposed for delay, and is true in point of fact as he verily believes.

GEORGE P. HAMILTON.

Sworn and subscribed May 1st, 1865, before—

H. SPROUL, *Clerk.*

In the circuit court of the United States for the western district of Pennsylvania, at Pittsburgh, in equity, No. 7, May term, 1865.

THE MAYOR AND CITY COUNCILS of Baltimore
vs.
THE CONNELLSVILLE & SOUTHERN PENN'A R. W. Co., Jno. A. Wright *et al.*, The Pittsburgh & Connellsville R. R. Co., and Andrew G. Curtin.

The demurrer of the Connellsville and Southern Pennsylvania Railway Company. and of John A. Wright, Thomas A. Scott, Josiah Bacon, John M. Kennedy, Wistar Morris, Edward C. Knight,
14 S. L. Russell, George W. Cass, D. R. Davidson, D. E. Small, J. D. Rody, Ashbel Greene, and A. K. McClure, to the bill of the mayor and city councils of Baltimore.

The said defendants, by protestation, not confessing or acknowledging to be true all or any of the matters and things in said complainant's bill contained, in manner and form as the same are therein set forth and alleged, doth demur in law to the said bill, and for causes of demurrer, show:

1. That the complainants have not, in and by their said bill, made and set forth such a case as ought to or doth entitle them to have the relief prayed for against the defendants, or any of them.

2. That the complainants have not, in and by their said bill, made or set forth such a case as ought to or doth entitle them to have the relief prayed for, or any relief whatever, as against the said defendants now here demurring; for that the said complainants being merely a creditor of the Pittsburgh and Connellsville Railroad Company, (see clause 9, on page 2 of bill,) and their said bill charging no collusion, combination, or conspiracy between said defendants and said the Pittsburgh and Connellsville Railroad Company, or between any of the defendants, to injure the said complainants, or in anywise to impair or defeat their alleged mortgage security, the case has no equity in it; and if the complainants are entitled to any relief in the premises as against the said defendants now demurring, it must be sought by and through the said Pittsburg and Connellsville Railroad Company, which, and not the said complainants, should be in the proper court the party complainant.

3. That the said complainants have not, in and by their said bill, made and set forth such a case as ought to or doth entitle them to have the relief prayed for, as against the said defendants now
15 thereto demurring; for that the said complainants have not, in and by their said bill, or in and by the map referred to in the 13th clause thereof, (page 3,) so defined and laid down the location (if any they have) of the alleged intended railroad of the said Pittsburgh and Connellsville Railroad Company, from Connellsville eastward and southward towards the line of the States of Pennsylvania and Maryland, or elsewhere, as to enable the said defendants now demurring, to confess or deny any intent to interfere therewith, or to occupy or appropriate the same or any part thereof for their railway, or so as to

enable the court to pronounce a decree, or grant an injunction concerning the same; but the said complainants have left the said location wholly undefined and uncertain.

4. That the several acts of assembly of the State of Pennsylvania passed in April, 1864, and referred to in the bill, are not set forth in extenso, or in anywise made parts of the bill.

5. That the following parts of said bill are argumentative, contain matters irrelevant to the relief prayed for, and, as to some of them, are scandalous and impertinent, viz:

The 3d clause, page 1, ending with "the entire nation."
The 4th clause, page 1, ending with "$200,000 accordingly."
The 5th clause, page 1, ending with "dollars."
The 6th clause, page 2, ending with "its completion."
The 10th clause, pages 2 & 3, ending with "the ordinance of 1856."
The 11th clause, page 3, ending with "Maryland."
The 14th clause, page 3, ending with "its favor, or not."
The 15th clause, pages 3 & 4, ending with "Railroad Company."
The 16th clause, page 4, ending with "Pennsylvania."
The 17th clause, page 5, ending with "said Corporation."
The 18th clause, page 4, ending with "charter of 1837."
The 19th clause, page 4, ending with "complained of."
The 21st clause, pages 4 & 5, ending with "State of Pensylvania."

Wherefore, and for divers other good causes of demurrer appearing in said bill, and in such parts thereof as are demurred to,
16 as aforesaid, the said defendants doth demur, and pray the judgment of this honorable court, whether they shall be compelled to make any further or other answers thereunto, and pray hence to be dismissed, with their reasonable costs in this behalf sustained.

We, who are of counsel for the defendants who interpose the foregoing demurrer, do certify that, in our opinion, it is well founded in point of law.

HAMILTON & ACHESON.
JAMES VEECH.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

George P. Hamilton, one of the counsel of said defendants, on his solemn oath doth depose and say the foregoing demurrer is not interposed for delay.

GEORGE P. HAMILTON.

Sworn and subscribed, May 1, 1865, before—
H. SPROUL, *Clerk.*

The replication of the complainants to the plea of the Connellsville and South. Penn'a R. W. Co., defendants.

THE MAYOR AND CITY COUNCILS OF BALTIMORE
vs.
THE CONN. AND SOUTH. PENN'A R. W. Co. and others.

These repliants, saving reserving unto themselves all advan-

tage of exception to the insufficiences of the said plea, for replication thereunto say, that the said complainants, by reason of anything by the said defendants in the said plea alleged, ought not be barred or precluded from maintaining their said bill of complaint against the said defendants, because they say there is not any record of
17 the said supposed bill and suit in the said plea mentioned remaining in the said circuit court of the United States for the western district of Pennsylvania in manner and form as the said defendants have above in their said plea alleged, and this they, the said complainants, are ready to verify when, where, and in such manner as the court order, direct, or appoint; without this, that any other matter or thing whatsoever in the said plea contained material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these repliants are ready to verify and prove as this honorable court shall direct, and pray as in and by their said bill they have already prayed.

GEO. SHIRAS, JR., *Sol. for Complainants.*

18 And now, to wit, June, 1865, this cause came on to be heard upon the pleadings, and was argued by counsel, and the court being fully advised in the premises, do order and decree as follows:

1st. That the complainant has shown a proper case for the interference of the court in his favor.

2. That the act complained of is unconstitutional and void under the admissions of the case.

3d. The complainant is entitled to the decree of the court on the pleadings as they stand.

4th. That the defendants have leave to withdraw their de-
19 murrer and answer over, and if they shall so request, an issue will be ordered to try whether the Pittsburgh and Connellsville R. R. Co. have misused or abused their charter.

I am instructed to say my brother McCandless fully concurs in this opinion.

Per cur. R. C. GRIER.

Bill dismissed as to the governor, as his acts can do neither harm nor good to either party. Respondents have thirty days to file answer and request issue; if not done in that time, final decree according to the prayer of the bill.

Copy of opinion of the court.

20 In C. C. U. S., W. D. of Pa., in chancery.

THE MAYOR, &C., OF BALTIMORE
vs.
THE CONNELLSVILLE SOUTH. PENN'A R. R. *et al.*

Opinion of the court.

The single question for decision in this case is correctly stated in the argument of the learned counsel for the respondents as follows:

The charter of the Pittsburgh and Connellsville Railroad Company contains the following provision, viz: "If the said company shall at

any time misuse or abuse any of the privileges herein granted, the legislature may resume all and singular the rights and privi-
21 leges hereby granted to such corporation."

Under this clause the legislature, by an act passed in 1864, revoked and resumed all and singular the rights and privileges granted to said company, so far as the same authorized it to construct any line or lines of railway southwardly or eastwardly from Connellsville

Is this repealing act repugnant to the Constitution of the United States, on the ground that it impairs the obligation of the contract between the State and the company?

The objections made on the argument to the form of the pleading, and the right of the complainant to have the remedy sought in his bill, will be found overruled in a similar case by the Supreme
22 Court. We refer to the case of Dodge *vs.* Wolsey, (18 Howard, 336.)

In that case the complainant was a stockholder in the corporation whose interests were likely to be injuriously affected by the State legislation if it should be carried into effect. In this case the complainant is a creditor who, on the faith of legislative acts granting certain purchases and privileges to the Pittsburgh & Connellsville R. R. Co., has advanced large sums of money which have been expended in constructing their road.

If that corporation should submit to this act of the legislature divesting them of a most valuable part of their franchise, the security and rights of the complainants would be materially injured.
23 The bill is in the nature of a bill quia timet, and the complainant has a right to the remedy sought, if the court should be of opinion that the act of 1864 impairs the obligation of the original contract or act of incorporation granted to the Pittsburgh & Connellsville R. R. Co.

The only question then is as to the validity of the act.

That this act repealing the franchises of the corporation in a material part and transferring its franchises and property to another corporation without their consent, impairs the obligation of the original contract is not, and cannot be denied; nor is it denied that an act granting corporate privileges to a body of men who have proceeded on the faith of it to subscribe stock and borrow money and expend it in constructing of a valuable public improvement is a contract,
24 and that it is not in the power of either party to it to repudiate or annul it without the consent of the other.

The State claims no sovereign power to repudiate its contracts or defraud its citizens, and the Constitution delegates no such power to the legislature.

If, in the act of incorporation, the legislature retains the absolute and unconditional power of revocation for any or no reason; if it be so written on the bond, the party accepting a franchise on such conditions cannot complain if it be arbitrarily revoked; or if the contract be that the legislature may repeal the act, "whenever in its opinion" the corporation has "misused or abused" its privileges, then the contract constitutes the legislature the arbiter, and judges of the existence of that fact.

25 But the case before us comes within neither category. The contract does not give an unconditional right to the legislature to repudiate its contract, nor is the legislature constituted the tribunal to adjudge the question of fact as to "misuse or abuse;" moreover, the case before us admits that the condition of facts upon which the legislature are authorized to repeal the act does not exist. It admits that the corporation has neither "misused or abused" its privileges.

A charter may be vacated by the decree of a judicial tribunal in a proper proceeding for that purpose without any such revocation in the act. Then both parties are heard, and a verdict of a jury on the the facts can be obtained, which concludes the question. But the legislature possesses no judicial authority under the Constitu-
26 tion, and has no established course of proceeding in the exercise of such power.

The party who is injured by its action is not heard. The reasons usually alleged in the preamble to such acts are the mere suggestions of some interested party seeking to speculate at expense of others. Professional solicitors who infest the lobby are ever ready for a sufficient consideration to impose on the good nature of honest but of too careless legislators, by the suggestion of any necessary falsehood.

If any one should feel curious as to the method used by agents of corporations to obtain such legislative acts as may be desirable,
27 they will find them fully exposed in the opinion of the Supreme Court, delivered in the case of Marshall *vs.* Baltimore & Ohio R. R. Co., (16 Howard, 333.)

We do not intend even to insinuate that any such "secret services" by skilful and unscrupulous agents, "stimulated to active partizanship by the strong lure of high profits," to use the "most efficient means" to get the vote of the careless mass of legislators, have been used in this case. But we do say, that *that* the recital in the preamble to that act exhibited a labored attempt to justify a more than doubtful exercise of power by an array of reasons, which even if true in fact, might be demurred to in law as insufficient.

The act does not contemplate the exercise of the right of eminent domain by which the property of individuals or corporations
28 may be taken for some public use on making ample compensation. Its object is to transfer the franchises and property of one corporation, anxious by every means in its power to complete a valuable public improvement, to another whose interest it is not to complete the road, and who are not required to do so at any time in this or the next century. When, in a case like the present, the legislatures are asked to take the property of one corporation and give it to another, on the ground that one has misused or abused its privileges, the just and proper mode would be to pass a resolution ordering the Attorney General to institute the proper legal proceedings to ascertain the fact of misuse or abuse; if such issue be found
29 true, then that the charter be revoked or resumed. We do not say that without such judicial proceeding, ascertaining the existence of the condition on which the right of appeal is reserved, the

act is absolutely void; but we do say that in all such cases the party injured, if he denies the existence of such "misuse or abuse," has a right to be heard, and to have that question tried before he shall surrender his property or his franchise.

We do not think it necessary to notice the numerous and conflicting cases which have been brought to our notice by the learned counsel.

In the case of the Erie & N. East R. R. *vs.* Casey, (26 Pennsylvania, 1st Grant,) the court found, after a full hearing of the parties,
30 that the fact of "misuse or abuse" did exist, and therefore the act was not void.

It cannot therefore be any precedent for a case which admits that said facts do not exist.

The principles of law, so far as they affect this case, are very clearly and tersely stated by Chief Justice Lewis, in his opinion to be found in 1 Grant, 275, with a review of the case, and a proper appreciation of that from Iowa.

The sum of the whole matter is this:

1. The complainant has shown a proper case for the interference of the court in his favor.

2. That the act complained of is unconstitutional and void
31 under the admissions of the case.

3. The complainant is entitled to the decree of the court on the proceedings as they stand.

4. That the defendants have leave to withdraw their demurrer and answer over, and if they should so request, an issue will be ordered to try whether the Pittsburgh & Connellsville R. R. have "misused or abused" their charter.

I am authorized to say my brother McCandless fully concurs in this opinion.

Per cur. R. C. GRIER.

Bill dismissed as to the governor, as his acts can do neither harm nor good to either party.

Respondent has thirty days to file answer and request issue; if not done in that time, final decree according to prayer of bill.

32 And afterwards, to wit, August 24th, 1865, comes the respondents by their counsel, and files the answer of the Connellsville & Southern Penn'a Railway Co., and the answer of John A. Wright and others.

(See copy annexed.)

And afterwards, to wit, September 25th, 1865, comes the respondents by their counsel, and files the answer of Wistar Morris, A. K. McClure, and others.

(See copy annexed.)

33 *Paper book.*

In the circuit court of the United States for the western district of Pennsylvania.

In the circuit court of the United States for the western district of Pennsylvania, of May term, 1865, in equity.

THE MAYOR and CITY COUNCILS OF BALTIMORE, a corporation of the State of Maryland, and a citizen of said State,
vs.
THE CONNELLSVILLE AND SOUTHERN PENNSYLVANIA Railway Company, the Pittsburgh and Connellsville Railroad Company, and other citizens of the State of Pennsylvania. } No. 7.

The answer of the Connellsville and Southern Pennsylvania railway Company to the bill of complaint in the above case:

These defendants, now and at all times hereafter reserving to themselves all right of exception to the said bill, for answer thereto, or to so much thereof as these defendants are advised is material, or necessary for them to make answer unto, say:

34 That an act of the general assembly of the Commonwealth of Pennsylvania, entitled "An act to incorporate the Pittsburgh and Connellsville Railroad Company," was duly approved on the third day of April, A. D. 1837, but that they know not, have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise, whether or not the Pittsburgh and Connellsville Railroad Company, in the said bill mentioned, was by or under the said act of assembly duly created a body politic.

That on the eighteenth day of April, A. D. 1843, there was approved an act of the general assembly of the Commonwealth of Pennsylvania, entitled "An act for the relief of the overseers of the poor of the borough of Erie, and for other purposes," by the seventh section whereof it was provided that the Pittsburgh and Connellsville Railroad Company should have full power and discretion to select any route from the city of Pittsburgh to Turtle creek, which should be deemed most eligible and advantageous, and to extend their railroad beyond Connellsville to Smithfield, or any other point on the waters of the Youghiogheny, and within the limits of the Commonwealth of Pennsylvania. That the said act contains other provisions in regard to the Pittsburgh and Connellsville Railroad Company, which by reference thereto will appear.

That these defendants admit that the Pittsburgh and Connellsville Railroad Company, one of the defendants in the said bill, was made and declared to be incorporate as a body corporate in the State of Maryland, by an act of the general assembly of the State of Maryland, passed at January sessions, 1853, and was authorized to continue its road from the dividing line between the States of Maryland and Pennsylvania to the town of Cumberland, in the State of Mary-

land, there to connect with the Baltimore and Ohio Railroad and the Chesapeake and Ohio canal.

That these defendants refer to the seventh section of the aforesaid act of the general assembly of the Commonwealth of Pennsylvania, approved the 18th day of April, A. D. 1843; the seventh resolution of an act of the said general assembly, approved the 19th day
35 April, 1843, entitled "Resolution legalizing the election of a justice of the peace in the borough of Dellsburg, in the county of York, and for other purposes;" the sixth section of an act of the said general assembly, entitled "An act to authorize the court of quarter sessions of Allegheny county to vacate Delaware lane, in said county, and for other purpoces," approved the 3d day of April, A. D. 1846; an act of the said general assembly, entitled "A supplement to an act to incorporate the Pittsburgh and Connellsville Railroad Company, passed April 3d, 1837," approved the 15th day of March, 1847; and the sixth section of an act of the said general assembly, entitled "An act to incorporate the Safe Harbor and Susquehanna Turnpike Road Company," approved the 18th day of April, A. D. 1853, as showing the action of the legislature of Pennsylvania, from time to time, in conferring or withdrawing upon the Pittsburgh and Connellsville Railroad Company the right to extend their railroad to the southward or eastward of Connellsville.

That whether the aforesaid act of the general assembly of the State of Maryland, whereby the Pittsburgh and Connellsville Railroad Company, of the State of Pennsylvania, was made and declared to be incorporated as a body corporate in the State of Maryland, created, or was intended to create, a new corporation, distinct from the Pittsburgh and Connellsville Railroad Company of the State of Pennsylvania, is a question which these defendants submit to the court; but that these defendants have been informed and believe that there is in fact but one organized company known as the Pittsburgh and Connellsville Railroad Company in existence, seven of the directors of which, viz: William O. Hugart, Joseph Pennock, Cyrus Meyers, G. L. B. Fetterman, John Fleming, William Phillips, and William Baldwin, are citizens of Pennsylvania, and five, viz: C. Oliver O'Donnell, John Hopkins, Benjamin Dedford, Joseph R. Marston, and W. W. Taylor, are citizens of Maryland.

That these defendants admit that the legislature of Pennsylvania, by acts passed at various sessions, authorized the city of Pittsburgh, the county of Allegheny, and the boroughs of McKeesport
36 and Connellsville, to subscribe for stock in the Pittsburgh and Connellsville Railroad Company, but that they know not, have not been informed save by complainants' bill, and cannot set forth as to their belief or otherwise, whether or not the legislature of Maryland, by an act passed on the 25th day of May, 1853, or on some other date, authorized the city of Baltimore to give such aid to the construction of the said road between Pittsburgh and Cumberland as the said city might deem expedient, on the condition in the bill of complaint in this case stated; or whether or not, by another act of the same legislature, passed on the 27th day of February, A. D.

1856, or on some other date, the town of Cumberland was authorized to subscribe for and hold shares in the Pittsburgh and Connellsville Railroad Company to any amount, or on any or what conditions: or whether or not the said city and the said railroad company, or either, assented to the alleged conditions of the said act: That they have been informed and believe that the said city of Cumberland did subscribe for certain shares of the stock of the said company, but what the amount of the subscription was these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief otherwise.

That these defendants have been informed and believe that the city of Pittsburgh, the county of Allegheny, and the boroughs of McKeesport and Connellsville, did subscribe for stock of the Pittsburgh and Connellsville Railroad Company, but that these defendants are utter strangers to the amount of such subscriptions, the terms upon which they were made, and the payments, if any made thereon, and cannot set forth as to their belief, or otherwise, concerning the same.

That these defendants have been informed and believe that, some time in the year 1854, the Pittsburgh and Connellsville Railroad Company adopted a line on the north bank of the Youghiogheny river, from a point at or near the borough of West Newton, in Westmoreland county, to a point at or near the borough of Connellsville, in Fayette county, Pennsylvania, and also a line for a tunnel through the Allegheny mountains at the Sand Patch Summit, in Somer-
37 set county, Pennsylvania, as portions of the route of their road; that the graduation and masonry of these portions were contracted for in the same year, and that no other portion of the route was located until afterwards; that these defendants have not been informed, and cannot set forth, as to their belief, or otherwise, as to the difficulties or causes which led to the non-completion of the road; and that these defendants refer to the acts themselves by which the legislature of Pennsylvania is alleged by complainants to have continued to recognize the existence and encourage the efforts of the Pittsburgh and Connellsville Railroad Company, when the same shall have been produced by the complainants.

That these defendants, without admitting that the purport of the act of the legislature of Pennsylvania of April 11th, 1856, cited in complainants' bill, is correctly stated, refer to the said act itself for the meaning and purport thereof.

That these defendants do not admit that the legislature of Pennsylvania did, as in said bill alleged, declare by the said act of April 11, 1856, that whatever might have been its (the said legislature's) rights up to that time, under the twentieth section of the original charter, in regard to the misuse or abuse of any of the privileges thereby conferred, they were waived and abandoned. That as to the loan made by the city of Baltimore to the Pittsburgh and Connellsville Railroad Company, the circumstances under which the same was made, the amount loaned, the mode in which it was secured, the belief or reliance of the city of Baltimore, and the com-

missioners of finance of said city when making the said loan, these defendants are utter strangers, and cannot set forth as to their belief, or otherwise, concerning the same.

That these defendants, without having any accurate knowledge on the subject, believe, and therefore admit, that on the 18th day of July, A. D. 1856, there were not more than twenty-five miles of the road of the Pittsburgh and Connellsville Railroad Company in
38 operation from Connellsville to West Newton; that the said company possessed but a very small amount of rolling stock; that the said company was heavily in debt; that they were dependent for communication with the city of Pittsburgh upon the Pennsylvania Central railroad, with which their road had a connection at Turtle creek; and that the revenue of the said company was very small; but what the rolling stock consisted of, what the floating debt was, and whether the revenue was or was not sufficient to defray the actual working expenses, are questions upon which these defendants have not been informed save by complainants' bill, and as to which they cannot set forth as to their belief or otherwise; that these defendants have not been informed, save by complainants' bill, and cannot set forth as their belief or otherwise, as to the effect of the commercial troubles of 1857, and the political troubles which culminated in war in the year 1861, upon the operations of the Pittsburgh and Connellsville Railroad Company; that whether the said company had, at the date of the passage in the year 1864 of the act of the legislature of Pennsylvania, entitled "An act relative to the Pittsburgh and Connellsville Railroad Company," afforded any ground for the charge of misuse or abuse, or both, of their charter, is a question which was decided affirmatively, and against the said company by the said legislature after a full hearing of the agents and representatives of the said company before a committee of the legislature of Pennsylvania and before the governor, and a question in which these defendants are not in any way interested; that the said Pittsburgh and Connellsville Railroad Company have at the present time constructed a railroad extending for a distance of about sixty miles from the city of Pittsburgh southeastwardly to Connellsville, and had leased a road, some twelve miles in length, extending from Connellsville to Uniontown, and are now working the said roads; but whether the rolling stock thereon is adequate, whether it consists of the locomotives, passenger and freight cars in the said bill mentioned; whether the said company have constructed all the necessary switches, turn-outs, water stations, appurtenances, and whether they had, at the date of the passage of the said act, or have now paid off their floating debt, are matters as to which these defendants have not been informed, save by complainants' bill, and as to which
39 they cannot set forth as to their belief or otherwise. And these defendants do not believe that the said company had, at the date of the passage of the said act, or that they now have surveyed and placed in a condition to let the whole work in Pennsylvania; that a considerable amount of the work upon the aforesaid tunnel through the Alleghenies had been done, but whether it amounted

to one-half of that required to be done these defendants have not been informed, save by complainants' bill, and cannot answer as to their belief or otherwise. That excepting the work upon said tunnel, the said company had not, at the date of the passage of the said act, nor have they now, begun to construct a railroad, or any part thereof, to the southward or eastward of Connellsville; that at the date of the passage of the said act the railroad of the said company extended into the city of Pittsburgh, thereby enabling the said company to dispense with the connection aforesaid with the Pennsylvania Central Railroad for the purpose of making a complete route between Pittsburgh and Connellsville, but that the said extension of their road into the city of Pittsburgh, which in the complainants' bill is alleged to be a road ten miles in length, forms part of the said road, of about sixty miles in length, between Pittsburgh and Connellsville, already mentioned. That these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise, whether or not the said company had at the date aforesaid, or have now, secured the right of way to the Maryland line, or what was the gross revenue of said company for 1863, or what sum they had clear of all expenses or otherwise to be applied to the further construction of the work, or actually expended on it, or otherwise, or whether the said company had secured the co-operation of the Baltimore and Ohio Railroad Company, or what capital the said Baltimore and Ohio Railroad Company had agreed to furnish, or what sum the said Baltimore and Ohio Railroad Company had agreed to advance, or on what rate or on what terms the advance was to be made, or whether the said Baltimore and Ohio Railroad Company would have made the said advance but for the passage of the act of the legislature of Pennsylvania aforesaid, or whether the whole capital required to complete and stock the road between Pittsburgh and Cumberland could have been obtained upon a mortgage such as that in the said bill mentioned, or whether the said city of Baltimore had, or was willing to make, or had in any way provided for making, such a mortgage; but that these defendants have been informed and believe that the Baltimore and Ohio Railroad Company, a corporation of the State of Maryland, owns a majority of the shares of the stock of Pittsburgh and Connellsville Railroad Company, and controls the operations of the said company.

That it may be true, for aught these defendants know to the contrary, that the city of Baltimore did, by an ordinance passed on the 21st day of April, A. D. 1858, or at some other time, agree to waive the mortgage which it held, so far as to enable said Pittsburgh and Connellsville Railroad Company to borrow on the ten miles of road next Pittsburgh, four hundred thousand dollars, or some other sum, on a pledge thereof to assist in constructing said road; and that afterwards, when the said company was suffering from the derangements of the late war, or from some other cause, the said city agreed to lend the proceeds of a particular fund for the special emergency, but that these defendants are utter strangers to these matters, and cannot set forth as to their belief or otherwise concerning the same.

That it is impossible for these defendants to say whether or not, except for the alleged wrongs and injuries in the said bill complained of, the railroad from Connellsville to Cumberland would probably have been under contract for completion at the time when the said bill was filed; that the legislature of Pennsylvania, by an act which became a law on the 19th day of August, A. D. 1864, did, for the reasons therein stated, declare that all the rights, powers, privileges, and franchises of every kind whatsoever, authorized or created by the act of assembly approved April 3, 1837, authorizing the incorporation of the Pittsburgh and Connellsville Railroad Company, and all supplements thereto, so far as the same, or any of them, authorize the construction of any line or lines of railway southwardly or eastwardly from Connellsville, were thereby revoked and resumed by the Commonwealth of Pennsylvania; and by the same act
41 did further provide that compensation should be made to the said company, to the extent and in the manner therein mentioned, as by reference to the same will more fully and at large appear. That by another act, which became a law on the 19th day of August, 1864, entitled "An act to incorporate the Connellsville and and Southern Pennsylvania Railway Company," the legislature of the said State did confer upon these defendants certain rights, privileges, and franchises. That these defendants believe these two acts are the acts referred to in the complainants' bill as having been passed on the th day of April, 1864, and that the acts themselves will show the intention of the legislature in the premises.

That these defendants, without having any certain knowledge on the subject, do not believe that the said Pittsburgh and Connellsville Railroad Company have ever finally adopted a route for the location of a railroad southeastwardly from Connellsville; that these defendants have been informed and believe that the said company have not filed in the office of the secretary of the Commonwealth of Pennsylvania any map or plan of the said alleged route; and that the map annexed to the bill filed in this case is not so drawn as to indicate the location on the ground of the road of which it professes to be the route.

That these defendants respectfully submit to the court that there is no such connection between the act incorporating these defendants and the act revoking the aforesaid rights, privileges, and franchises of the Pittsburgh and Connellsville Railroad Company, as to require or justify the making of these defendants parties to proceedings intended to test the constitutionality of the latter act; and that the decision of the legislature of Pennsylvania as to misuse or abuse, by the Pittsburgh and Connellsville Railroad Company, of its corporate rights and franchises, cannot legitimately be reviewed and affirmed or annulled in a suit between the complainants and these and the other defendants to the bill of complaint in this case; and that these defendants disclaim having any interest in the said suit.

That while these defendants cannot say whether the afore-
42 said acts of assembly were introduced and passed by the legislature without the approval and assent of any of the par

ties interested in the Pittsburgh and Connellsville Railroad Company, they believe, and therefore admit, that the Pittsburgh and Connellsville Railroad Company did not approve of or assent to the introduction and passage of the said acts. That they have been informed and believe that the said company did submit to and urge upon the said legislature, while the said acts were pending, and before they had been presented to the governor, and to the governor after they had been presented to him, their objections to the said acts, and especially to that entitled "An act relating to the Pittsburgh and Connellsville Railroad Company," becoming laws; that the said company was formally heard by counsel before a committee of the legislature in opposition to the passage of the said bills, and afterwards before the governor to induce him to return the said bills to the legislature without his approval; that whether the allegations contained in the preamble to the said act, revoking certain rights and franchises of the Pittsburgh and Connellsville Railroad Company, and are not untrue and without foundation in fact, and whether the legislature, in seeming to approve said allegations by passing said acts, were or were not imposed upon and deceived by interested parties, who desired to possess for themselves the rights and privileges theretofore granted by said legislature to the said Pittsburgh and Connellsville Railroad Company, are questions in which these defendants are not in any way interested.

That the fourth section of the act incorporating the Connellsville and Southern Pennsylvania Railway Company is in the following words, viz:

"That the corporation authorized to be created by this act shall pay to the Pittsburgh and Connellsville Railroad Company whatever sum may be found due them by the appraisers appointed by the governor of this Commonwealth, for or by reason of the expenditures made by them in or upon any line of Railroad southwardly or eastwardly from Connellsville, or shall have the right to purchase from the Pittsburgh and Connellsville Railroad Company all the works so constructed."

43 That with this exception there is no reference or allusion whatever in the said act to either the rights, franchises, or property of the Pittsburgh and Connellsville Railroad Company. That whether the said section, or the act revoking certain rights and franchises of the Pittsburgh and Connellsville Railroad Company, or both of them, are void, for the reasons alleged by the complainants, or any other reasons, is not a matter of fact as to which these defendants can answer.

That whether the causes and grounds of forfeiture alleged in the preamble of the said act of revocation were waived and abandoned by the said act of April 11, 1856, in the said bill mentioned, and whether the Commonwealth of Pennsylvania is equitably estopped from alleging said grounds or causes of forfeiture against the Pittsburgh and Connellsville Railroad Company, or against the complainants and the creditors and stockholders of the said corporations, are not matters of fact as to which these defendants can answer.

That whether any act repealing or revoking all or any of the rights, privileges, and franchises of the Pittsburgh and Connellsville Railroad Company could or could not at least afford only prima facie evidence of either misuse or abuse of all or any of the said rights, privileges and franchises, is a question of law; that these defendants have been informed and believe that the Pittsburgh and Connellsville Railroad Company had ample notice before the said act, revoking certain rights, powers, privileges, and franchises of the said company, had passed the said legislature, that the same had been introduced and was pending before the legislature, and that the said act contained the specific charges against said company which are to be found therein; that the said company had full opportunity to answer the said charges, and to oppose the passage of the said act, and did, as hereinbefore stated, avail themselves of such opportunity; that these defendants have not acted, and that they disclaim all intention of acting, on the assumption of the validity of the said act; and that they respectfully submit to the court that they have no in-
44 terest whatever in a judicial inquiry of which the validity of the said act is to be the subject.

That these defendants have been informed and believe that a writ of quo warranto was issued on the 11th day of May, A. D. 1865, by the supreme court of the State of Pennsylvania, on an information filed upon that day by the attorney general, for and on behalf of said Commonwealth, against the said Pittsburgh and Connellsville Railroad Company, calling upon the said company to show by what right they exercise the corporate rights and franchises claimed by the said company; that the said company appeared by counsel, and filed a plea to the said information; that the said cause is still pending and undetermined, and that the said company may therein show that they have neither abused nor misused the privileges conferred by their original charter, or any supplement thereto.

That these defendants have been duly organized as the Connellsville and Southern Pennsylvania Railway Company, under their charter of incorporation, and have thereby accepted the rights, privileges and franchises by the said charter conferred; that the said charter requires these defendants to pay to the Pittsburgh and Connellsville Railroad Company whatever sum may be found due by the appraisers appointed by the governor of this Commonwealth, for or by reason of the expenditures made by them in or upon any line of railroad southeastwardly or eastwardly from Connellsville, and gives to these defendants the right to purchase from the Pittsburgh and Connellsville Railroad Company all the works so constructed; but that, with that exception, the said charter does not in any way refer to any property rights, franchises, or privileges at any time held, possessed, or enjoyed by the said Pittsburgh and Connellsville Railroad Company, and that these defendants utterly disavow any intention of taking or assuming any of the rights, privileges and franchises now or heretofore possessed or enjoyed by the Pittsburgh and Connellsville Railroad Company.

That these defendants are entirely ignorant of the location

45 or existence of the route or road of the Pittsburgh and Connellsville Railroad Company between Connellsville and the dividing line between the States of Pennsylvania and Maryland, except so far as the same is indicated by the work done at the Sand Patch Summit, as hereinbefore mentioned. That application has been made on behalf of these defendants to the Pittsburgh and Connellsville Railroad Company, or its agents, to designate the location of their alleged route, so that these defendants might proceed in the construction of their own road without in any way interfering with the said location, but that neither the said company, nor its agents, have ever furnished to these defendants, or anywhere, to the knowledge of these defendants, exhibited any plan, map, or statement from which a competent engineer could locate the said alleged route; that these defendants disclaim any intention of taking possession of the said route or road, or any portion thereof, wherever the same may be, or of appropriating to themselves the property of the Pittsburgh and Connellsville Railroad south and east of Connellsville, or elsewhere, or of exercising, or pretending to exercise or control the rights, privileges, and franchises heretofore granted and confirmed upon the Pittsburgh and Connellsville Railroad Company.

And to the several interrogatories to the said bill of complaint annexed these defendants answering, say:

First. That the requisite number of the commissioners named in the act of the general assembly of the Commonwealth of Pennsylvania, entitled "An act to incorporate the Connellsville and Southern Pennsylvania Railway Company," which became a law on the 10th day of August, A. D. 1864, have accepted the said act, and have opened books, received subscriptions for the stock of, and organized the said company according to law.

Second. That the said commissioners have opened books for the subscription of the capital stock of the said company; that the said books were opened at Bedford, Pennsylvania, on the 14th day of October, A. D. 1864; that one hundred and two thousand two hundred and seventeen shares have been subscribed for, and five
46 dollars on each share, or five hundred and eleven thousand and eighty-five dollars, have been paid in.

Third. That the subscribers for the said stock have organized by the election of officers; and that Thomas A. Scott, Josiah Bacon, John M. Kennedy, Wistar Morris, Edward C. Knight, S. L. Russell, George W. Cass, D. R. Davidson, D. E. Small, J. D. Roddy, Ashbel Greene, and A. K. M'Clure are directors, and John A. Wright is president of the said Connellsville and Southern Pennsylvania Railway Company.

And these defendants pray to be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

In witness whereof they have caused their corporate seal, duly attested by the signature of their president, to be hereunto affixed this 22d day of August, A. D. 1865.

[SEAL.] JOHN A. WRIGHT,
President.

47 In the circuit court of the United States for the Western district of Pennsylvania, of May term, 1865.

THE MAYOR AND CITY COUNCILS OF Baltimore, a corporation of the State of Maryland, and a citizen of said State,
vs.
THE CONNELLSVILLE AND SOUTHERN Pennsylvania Railway Company, the Pittsburgh and Connellsville Railroad Company, and other citizens of the State of Pennsylvania.
No. 7, in equity.

The joint and several answer of John A. Wright, John M. Kennedy, Josiah Bacon, David E. Small, and Edward C. Knight, to the bill of complaint in this cause:

These defendants, and each of them, now and at all times hereafter saving and reserving to themselves all right of exception to the said bill, for answer thereto, or to so much thereof as these defendants are advised is material or necessary for them to make answer unto, each one answering for himself, say:

That an act of the general assembly of the Commonwealth of Pennsylvania, entitled "An act to incorporate the Pittsburgh and Connellsville Railroad Company," was duly approved on the third day of April, A. D. 1837; but that they, and each of them, know not, have not been informed, save by complainant's bill, and cannot set forth as to their belief or otherwise, whether or not the Pittsburgh and Connellsville Railroad Company, in the said bill mentioned,
48 was by or under the said act of assembly duly created a body politic.

That on the eighteenth day of April, A. D. 1843, there was approved an act of the general assembly of the Commonwealth of Pennsylvania, entitled, "An act for the relief of the overseers of the poor of the borough of Erie, and for other purposes," by the seventh section whereof it was provided that the Pittsburgh and Connellsville Railroad Company should have full power and discretion to select any route from the city of Pittsburgh to Turtle creek, which should be deemed most eligible and advantageous, and to extend their railroad beyond Connellsville to Smithfield, or any other point on the waters of the Youghiogheny, and within the limits of the Commonwealth of Pennsylvania. That the said act contains other provisions in regard to the Pittsburgh and Connellsville Railroad Company, which by reference thereto will appear.

That these defendants have been informed and believe, and therefore admit, that the Pittsburgh and Connnellsville Railroad Company, one of the defendants in said bill, was made and declared to be incorporate as a body corporate in the State of Maryland, by an act of the general assembly of the State of Maryland, passed at January

sessions, 1853, and was authorized to continue its road from the dividing line between the States of Maryland and Pennsylvania to the town of Cumberland, in the State of Maryland, there to connect with the Baltimore and Ohio railroad and the Chesapeake and Ohio canal.

That these defendants admit that the legislature of Pennsylvania, by acts passed at various sessions, authorized the city of Pittsburgh, the county of Alleghany, and the boroughs of M'Keesport and Connellsville, to subscribe for stock in the Pittsburgh and Connellsville Railroad Company, but that they know not, have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise, whether or not the legislature of Maryland, by an act passed on the twenty-fifth day of May, A. D. 1853, or on
49 some other date, authorized the city of Baltimore to give such aid to the construction of the said road, between Pittsburgh and Cumberland, as the said city might deem expedient, on the conditions in the bill of complaint in this case stated. Or whether or not by another act of the same legislature, passed on the 27th day of February, A. D. 1856, or on some other date, the town of Cumberland was authorized to subscribe for and hold shares in the Pittsburgh and Connellsville railroad company, to any amount, or on any or what conditions, or whether or not the said city and the said railroad company, or either, assented to the alleged conditions of the said act; that they have been informed, and believe, that the said city of Cumberland did subscribe for certain shares of the stock of said company, but what the amount of the subscription was these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise.

That these defendants have been informed and believe that the city of Pittsburgh, the county of Alleghany, and the boroughs of M'Keesport and Connellsville, did subscribe for stock of the Pittsburgh and Connellsville Railroad Company, but that these defendants are utter strangers to the amount of such subscriptions, the terms upon which they were made, and the payments, if any, made thereon, and cannot set forth as to their belief or otherwise concerning the same.

That these defendants have been informed and believe that some time in the year 1854 the Pittsburgh and Connellsville Railroad Company adopted a line on the north bank of the Youghiogheny river, from a point at or near the borough of West Newton, in Westmoreland county, to a point at or near the borough of Connellsville, in Fayette county, Pennsylvania, and also a line for a tunnel through the Allegheny mountains at the Sand Patch Summit, in Somerset county, Pennsylvania, as portions of the route of their road. That the graduation and masonry of these portions were contracted for in the same year, and that no other portion of the route was located until afterwards. That these defendants have not been informed, and cannot set forth as to their belief or otherwise, as to the
50 difficulties or causes which led to the non-completion of the road. And that these defendants refer to the acts themselves

by which the legislature of Pennsylvania is alleged by complainants to have continued to recognize the existence and encourage the efforts of the Pittsburgh and Connellsville Railroad Company, when the same shall have been produced by the complainants.

That as to the loan made by the city of Baltimore to the Pittsburgh and Connellsville Railroad Company, the circumstances under which the same was made, the amount loaned, the mode in which it was secured, the belief or reliance of the city of Baltimore and the commissioners of finance of said city, when making the said loan, these defendants, and each of them, are utter strangers, and cannot set forth as to their belief or otherwise concerning the same.

That these defendants, without having any accurate knowledge on the subject, have been informed and believe, that on the eighteenth day of July, 1856, there were not more than twenty-five miles of the road of the Pittsburgh and Connellsville Railroad Company in operation from Connellsville to West Newton. That the said company possessed but a very small amount of rolling stock, that the said company was heavily in debt, that they were dependent for communication with the city of Pittsburgh upon the Pennsylvania Central railroad, with which their road had a connection at Turtle creek, and that the revenue of the said company was very small; but what the rolling stock consisted of, what the floating debt was, and whether the revenue was or was not sufficient to defray the actual working expenses, are questions upon which these defendants have not been informed, save by complainant's bill, and as to which they cannot set forth as to their belief or otherwise. That these defendants have not been informed, save by complainant's bill, and cannot set forth as to their belief or otherwise, as to the effect of the commercial troubles of 1857, and the political troubles which culminated in war in the year 1861, upon the operations of the Pittsburgh and Connellsville Railroad Company.

51 That the said Pittsburgh and Connellsville Railroad Company have, at the present time, constructed a railroad extending for a distance of about sixty miles from the city of Pittsburgh, southeastwardly to Connellsville, and have leased a road, some twelve miles in length, extending from Connellsville to Uniontown, and are, as these defendants are informed and believe, now working the said railroads; but whether the rolling stock thereon is adequate, whether it consists of the locomotives, passenger and freight cars in the said bill mentioned, whether the said company have constructed all the necessary switches, turn-outs, water stations, and appurtenances, and whether they had, at the date of the passage of said act, or have now, paid off their floating debt, are matters as to which these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise.

That these defendants, relying solely upon information, and not upon their own personal knowledge as to the same, do not believe that the said company had, at the date of the passage of the said act, or that they now have, surveyed and placed in a condition to let the whole work in Pennsylvania. That they have been informed and

believe, that a considerable amount of the work upon the aforesaid tunnel through the Alleghenies had been done, but whether it amounted to one-half of that required to be done these defendants have not been informed, save by complainants' bill, and cannot answer as to their belief or otherwise. That excepting the work upon the tunnel, the said company, as these defendants have been informed and believe, had not, at the date of the passage of the said act, nor have they now, begun to construct a railroad, or any part thereof, to the southward or eastward of Connellsville. That at the date of the passage of the said act, the railroad of the said company extended into the city of Pittsburgh, thereby enabling the said company to dispense with the connection aforesaid with the Pennsylvania Central railroad, for the purpose of making a complete route between Pittsburgh and Connellsville, but that the said extension of their road into the city of Pittsburgh, which in the complainants' bill is alleged to be a road ten miles in length, forms, to the
52 best of these defendants' knowledge and belief, part of the said road of about sixty miles in length, between Pittsburgh and Connellsville, already mentioned. That these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise, whether or not the said company had, at the date aforesaid, or have now, secured the right of way to the Maryland line; or what was the gross revenue of said company for 1863; or what sum they had clear of all expenses, or otherwise, to be applied to the further construction of the work, or actually expended on it, or otherwise; or whether the said company had secured the co-operation of the Baltimore and Ohio Railroad Company; or what capital the said Baltimore and Ohio Railroad Company had agreed to furnish; or what sum the said Baltimore and Ohio Company had agreed to advance, or on what rate, or on what terms the advance was to be made; or whether the said Baltimore and Ohio Railroad Company would have made the said advance but for the passage of the acts of the legislature of Pennsylvania aforesaid; or whether the whole capital required to complete and stock the road between Pittsburgh and Cumberland could have been obtained upon a mortgage such as that in the said bill mentioned; or whether the city of Baltimore had, or was willing to make, or had in any way provided for making such a mortgage.

That it may be true, for aught these defendants know to the contrary, that the city of Baltimore did, by an ordinance passed on the 21st of April, 1858, or at some other time, agree to waive the mortgage which it held, so far as to enable said Pittsburgh and Connellsville Railroad Company to borrow, on the ten miles of road next Pittsburgh, four hundred thousand dollars, or some other sum, on a pledge thereof, to assist in constructing said road; and that afterwards, when the said company was suffering from the derangements of the late war, or from some other cause, the said city agreed to lend the proceeds of a particular fund for the special emergency, but that these defendants are utter strangers to these matters, and cannot set forth as to their belief or otherwise concerning the same.

That these defendants refer to the acts in the said bill men-
53 tioned as having been passed on the day of April, A. D. 1864, when the same shall have been produced by the complainants.

That these defendants, without having any certain knowledge on the subject, do not believe that the said Pittsburgh and Connellsville Railroad Company have ever finally adopted a route for the location of a railroad southeastwardly from Connellsville, and that the map annexed to the bill filed in this case is not so drawn as to indicate the location on the ground of the road of which it professes to be the route.

That while these defendants cannot say whether the aforesaid acts of assembly were introduced and passed by the legislature without the assent and approval of any of the parties interested in the Pittsburgh and Connellsville Railroad Company, they believe, and therefore admit, that the Pittsburgh and Connellsville Railroad Company did not approve of or assent to the introduction and passage of the said acts; that they have been informed and believe that the said company did submit to and urge upon the said legislature, while the said acts were pending and before they had been presented to the governor, and to the governor after they had been presented to him, their objections to the said acts, and especially to that entitled "An act relating to the Pittsburgh and Connellsville Railroad Company," becoming laws. That the said company was formally heard by counsel before a committee of the legislature in opposition to the passage of the said bills, and afterwards before the governor, to induce him to return the said bills to the legislature without his approval. That whether the allegations contained in the preamble to the said act, revoking certain rights and franchises of the Pittsburgh and Connellsville Railroad Company, are or are not untrue and without foundation in fact; and whether the legislature, in seeming to approve said allegations, by passing said act, were or were not imposed upon and deceived by interested parties, who desired to possess for themselves the rights and privileges theretofore granted by said legislature to the said Pittsburgh and Connellsville Rail-
54 road Company, are questions in which these defendants are not in any way interested.

That the Connellsville and Southern Pennsylvania Railway Company has been duly organized under their charter of incorporation, and have thereby accepted the rights, privileges, and franchises by the said charter conferred. That the said charter requires said company to pay to the Pittsburgh and Connellsville Railroad Company whatever sum may be found due by the appraisers appointed by the governor of this Commonwealth, for or by reason of the expenditures made by them in or upon any line of railroad southwardly or eastwardly from Connellsville; and gives to said Connellsville and Southern Pennsylvania Railway Company the right to purchase from the Pittsburgh and Connellsville Railroad Company all the works so constructed, but that with this exception the said charter does not in any way refer to any property rights, franchises, or privileges, at

any time held, possessed, or enjoyed by the said Pittsburgh and Connellsville Railroad Company; and that these defendants, so far as they can answer for and on behalf of said Connellsville and Southern Pennsylvania Railway Company, utterly disavow any intention of taking or assuming any of the rights, privileges, and franchises now or heretofore possessed or enjoyed by the Pittsburgh and Connellsville Railroad Company.

That these defendants, so far as they can answer for and on behalf of said Connellsville and Southern Pennsylvania Railway Company, disclaim any intention of taking possession of the said route or road, or any portion thereof, wherever the same may be, of the Pittsburgh and Connellsville Railroad Company, or of appropriating to themselves the property of the said Pittsburgh and Connellsville railroad south and east of Connellsville, or elsewhere, or of exercising, or pretending to exercise or control the rights, privileges, and franchises heretofore granted and confirmed unto the Pittsburgh and Connellsville Railroad Company.

And to the several interrogatives to the said bill of complaint
55 annexed, these defendants, each one answering for himself, answering, say:

First. That the requisite number of the commissioners named in the act of assembly of the Commonwealth of Pennsylvania, entitled, "An act to incorporate the Connellsville and Southern Railway Company," which became a law on the 19th day of August, A. D. 1864, have accepted the said act, and have opened books, received subscriptions for the stock of, and organized the said company according to law.

Second. That the said commissioners have opened books for the subscription of the capital stock of the said company; that the said books were opened at Bedford, Pennsylvania, on the 14th day of October, 1864; that one hundred and two thousand two hundred and seventeen shares have been subscribed for, and five dollars on each share, or five hundred and eleven thousand and eighty-five dollars, have been paid in.

Third. That the subscribers for the said stock have organized by the election of officers; and that Thomas A. Scott, Josiah Bacon, John M. Kennedy, Wistar Morris, Edward C. Knight, S. L. Russell, George W. Cass, D. R. Davidson, D. E. Small, J. D. Roddy, Ashbel Greene, and A. K. M'Clure, are directors, and that John A. Wright is president of the said Connellsville and Southern Pennsylvania Railway Company.

And these defendants pray to be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

JNO. M. KENNEDY.
E. C. KNIGHT.
JOSIAH BACON.
D. E. SMALL.
JOHN A. WRIGHT.

CITY OF PHILADELPHIA, *ss:*

John A. Wright, one of the defendants above named, being duly sworn according to law, deposes and says that the facts set
56 forth in the foregoing answer, so far as stated upon his own knowledge, are true, and so far as stated upon the information of others he verily believes the same to be true.

JOHN A. WRIGHT.

Sworn and subscribed before me, this 18th day of August, A. D. 1865.

D. P. BROWN, JR.,
United States Commissioner.

CITY OF PHILADELPHIA, *ss:*

John M. Kennedy, one of the defendants above named, being duly affirmed according to law, deposes and says that the facts set forth in the foregoing answer, so far as stated upon his own knowledge, are true, and so far as stated upon the information of others he verily believes the same to be true.

JNO. M. KENNEDY.

Affirmed and subscribed before me, this twelfth day of August, A. D. 1865.

D. P. BROWN, JR.,
United States Commissioner.

CITY OF PHILADELPHIA, *ss:*

Josiah Bacon and Edward C. Knight, two of the defendants above named, being duly affirmed according to law, depose and say that the facts set forth in the foregoing answer, so far as stated upon their and each of their own knowledge, are true, and so far as stated upon the information of others they and each of them verily believe the same to be true.

E. C. KNIGHT.
JOSIAH BACON.

Affirmed and subscribed before me, this twelfth day of August, A. D. 1865.

AUDREY H. SMITH,
United States Commissioner.

YORK COUNTY, *ss:*

David E. Small, one of the defendants above named, being duly affirmed according to law, deposes and says that the facts set forth in the foregoing answer, so far as stated upon his own knowl-
57 edge, are true, and so far as stated upon the information of others he verily believes the same to be true.

D. E. SMALL.

Affirmed and subscribed before me, this fifteenth day of August, A. D. 1865.

PETER M'INTYRE,
Associate Judge.

58 In the circuit court of the United States for the western district of Pennsylvania.—Of May term, 1865.

THE MAYOR AND CITY COUNCILS OF BALTIMORE, a corporation of the State of Maryland, and a citizen of said State,
versus
THE CONNELLSVILLE AND SOUTHERN PENNsylvania Railway Company, the Pittsburgh and Connellsville Railroad Company, and other citizens of the State of Pennsylvania.
} No. 7.—In equity.

The joint and several answers of Wistar Morris, A. K. M'Lure, Geo. W. Cass, John D. Roddy, and Samuel L. Russell, to the bill of complaint in this cause:

These defendants, and each of them, now and at all times hereafter saving and reserving to themselves all right of exception to the said bill, for answer thereto or to so much thereof as these defendants are advised is material or necessary for them to make answer unto, each one answering for himself, say:

That an act of the general assembly of the Commonwealth of Pennsylvania, entitled "An act to incorporate the Pittsburgh and Connellsville Railroad Company," was duly approved on the third day of April, A. D. 1837, but that they and each of them know not, have not been informed, save by complainant's bill, and cannot set forth as to their belief or otherwise, whether or not the Pittsburgh and Connellsville Railroad Company, in the said bill mentioned
59 was by or under the said act of assembly duly created a body politic.

That on the eighteenth day of April, A. D. 1843, there was approved an act of the general assembly of the Commonwealth of Pennsylvania, entitled "An act for the relief of the overseers of the poor of the borough of Erie, and for other purposes," by the seventh section whereof it was provided that the Pittsburgh and Connellsville Railroad Company should have full power and discretion to select any route from the city of Pittsburgh to Turtle creek which should be deemed most eligible and advantageous, and to extend their railroad beyond Connellsville to Smithfield, or any other point on the waters of the Youghiogheny and within the limits of the Commonwealth of Pennsylvania. That the said act contains other provisions in regard to the Pittsburgh and Connellsville Railroad Company, which, by reference thereto, will appear.

That these defendants have been informed and believe, and therefore admit, that the Pittsburgh and Connellsville Railroad Company, one of the defendants in the said bill, was made and declared to be incorporate as a body corporate in the State of Maryland, by an act of the general assembly of the State of Maryland, passed in January sessions, 1853, and was authorized to continue its road from the dividing line between the States of Maryland and Pennsylvania to

the town of Cumberland, in the State of Maryland, there to connect with the Baltimore and Ohio railroad and the Chesapeake and Ohio canal.

That these defendants admit that the legislature of Pennsylvania, by acts passed at various sessions, authorized the city of Pittsburgh, the county of Allegheny, and the boroughs of McKeesport and Connellsville, to subscribe for stock in the Pittsburgh and Connellsville Railroad Company, but that they know not, have not been informed, save by complainants' bill, and cannot set forth, as to their belief or otherwise, whether or not the legislature of the State of Maryland, by an act passed on the twenty-fifth day of May, A. D. 1853,
60 or on some other date, authorized the city of Baltimore to give such aid to the construction of said road, between Pittsburgh and Cumberland, as the said city might deem expedient, on the condition in the bill of complaint in this case stated; or whether or not, by another act of the same legislature, passed on the 27th day of February, A. D. 1856, or on some other date, the town of Cumberland was authorized to subscribe for and hold shares in the Pittsburgh and Connellsville Railroad Company, to any amount or on any and what conditions, or whether or not the said city and the said railroad company, or either, assented to the alleged conditions of the said act; that they have been informed and believe that the said city of Cumberland did subscribe for certain shares of the stock of the said company, but what the amount of the subscription was these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise.

That these defendants have been informed and believe that the city of Pittsburgh, the county of Allegheny, and the boroughs of McKeesport and Connellsville, did subscribe for stock of the Pittsburgh and Connellsville Railroad Company, but that these defendants are utter strangers to the amount of such subscriptions, the terms upon which they were made, and the payments, if any, made thereon, and cannot set forth as to their belief or otherwise concerning the same.

That these defendants have been informed and believe that, some time in the year 1854, the Pittsburgh and Connellsville Railroad Company adopted a line on the north bank of the Youghiogheny river, from a point at or near the borough of West Newton, in Westmoreland county, to a point at or near the borough of Connellsville, in Fayette county, Pennsylvania, and also a line for a tunnel through the Allegheny mountains, at the Sand Patch Summit, in Somerset county, Pennsylvania, as portions of the route of their road. That the graduations and masonry of these portions were contracted for in the same year, and that no other portion of the route was located until afterwards. That these defendants have not been in-
61 formed, and cannot set forth as to their belief or otherwise, as to the difficulties or causes which led to the non-completion of the road; and that these defendants refer to the acts themselves by which the legislature of Pennsylvania is alleged by complainants to have continued to recognize the existence and encourage the efforts

of the Pittsburgh and Connellsville Railroad Company, when the same shall have been produced by the complainants. That as to the loan made by the city of Baltimore to the Pittsburgh and Connellsville Railroad Company, the circumstances under which the same was made, the amount loaned, the mode in which it was secured, the belief or reliance of the city of Baltimore and the commissioners of finance of said city when making the said loan, these defendants, and each of them, are utter strangers, and cannot set forth as to their belief or otherwise concerning the same.

That these defendants, without having any accurate knowledge on the subject, have been informed and believe that on the eighteenth day of July, 1856, there were not more than twenty-five miles of the road of the Pittsburgh and Connellsville Railroad Company in operation, from Connellsville to West Newton. That the said company possessed but a very small amount of rolling stock, that the said company was heavily in debt, that they were dependent for communication with the the city of Pittsburgh upon the Pennsylvania Central railroad, with which their road had a connection at Turtle creek, and that the revenue of the said, company was very small, but what the rolling stock consisted of, what the floating debt was, and whether the revenue was or was not sufficient to defray the actual working expenses, are questions upon which these defendants have not been informed, save by complainants' bill, and as to which they cannot set forth as to their belief or otherwise. That these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise, as to the effect of the commercial troubles of 1857, and the political troubles which culminated in war in the year 1861, upon the operations of the Pittsburgh and Connellsville Railroad Company.

That the said Pittsburgh and Connellsville Railroad Com-
62 pany have, at the present time, constructed a railroad extending for a distance of about sixty miles from the city of Pittsburgh, southeastwardly to Connellsville, and have leased a road some twelve miles in length, extending from Connellsville to Uniontown, and are, as these defendants are informed and believe, now working the said roads; but whether the rolling stock thereon is adequate, whether it consists of the locomotives, passenger and freight cars in the said bill mentioned, whether the said company have constructed all the necessary switches, turn-outs, water stations and appurtenances, and whether they had, at the date of the passage of the said act, or have now, paid off their floating debt, are matters as to which these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise.

That these defendants, relying solely upon information and not upon their own personal knowledge as to the same, do not believe that the said company had, at the date of the passage of the said act, or that they now have, surveyed and placed in a condition to let the whole work in Pennsylvania. That they have been informed and believe that a considerable amount of the work upon the aforesaid tunnel through the Alleghenies had been done, but whether it

amounted to one-half of that required to be done these defendants have not been informed, save by complainants' bill, and cannot answer as to their belief or otherwise. That excepting the work upon the tunnel, the said company, as these defendants have been informed and believe, had not at the date of the passage of the said act, nor have they now, begun to construct a railroad, or any part thereof, to the southward or eastward of Connellsville. That at the date of the passage of the said act the railroad of the said company extended into the city of Pittsburgh, thereby enabling the said company to dispense with the connection aforesaid with the Pennsylvania Central railroad, for the purpose of making a complete route between Pittsburgh and Connellsville; but that the said extension of their road into the city of Pittsburgh, which in the complainants' bill is alleged to be a road ten miles in length, forms, to the best of these defendants' knowledge and belief, part of the said road of
63 about sixty miles in length, between Pittsburgh and Connellsville, already mentioned. That these defendants have not been informed, save by complainants' bill, and cannot set forth as to their belief or otherwise, whether or not the said company had at the date aforesaid, or have now, secured the right of way to the Maryland line, or what was the gross revenue of said company for 1863, or what sum they had clear of all expenses, or otherwise, to be applied to the further construction of the work or actually expended on it, or otherwise, or whether the said company had secured the co-operation of the Baltimore and Ohio Railroad Company, or what capital the said Baltimore and Ohio Railroad Company had agreed to furnish, or what sum the said Baltimore and Ohio Railroad Company had agreed to advance, or on what rate or on what terms the advance was to be made, or whether the said Baltimore and Ohio Railroad Company would have made the said advance but for the passage of the act of the legislature of Pennsylvania aforesaid, or whether the whole capital required to complete and stock the road between Pittsburgh and Cumberland could have been obtained upon a mortgage such as that in the said bill mentioned, or whether the city of Baltimore had, or was willing to make, or had in any way provided for making such a mortgage.

That it may be true, for aught these defendants know to the contrary, that the city of Baltimore did, by an ordinance passed on the 21st of April, 1858, or at some other time, agree to waive the mortgage which it held, so far as to enable said Pittsburgh and Connellsville Railroad Company to borrow on the ten miles of road next Pittsburgh four hundred thousand dollars, or some other sum, on a pledge thereof, to assist in constructing said road, and that afterwards, when the said company was suffering from the derangements of the late war, or from some other cause, the said city agreed to lend the proceeds of a particular fund for the special emergency, but that these defendants are utter strangers to these matters and cannot set forth as to their belief or otherwise concerning the same.

That these defendants refer to the acts in the said bill mentioned, as having been passed on the day of April, A. D.

64 1864, when the same shall have been produced by the complainants.

That these defendants, without having any certain knowledge on the subject, do not believe that the said Pittsburgh and Connellsville Railroad Company have ever finally adopted a route for the location of a railroad southeastwardly from Connellsville, and that the map annexed to the bill filed in this case, is not so drawn as to indicate the location on the ground of the road of which it professes to be the route.

That while these defendants cannot say whether the aforesaid acts of assembly were introduced and passed by the legislature, without the assent and approval of any of the parties interested in the Pittsburgh and Connellsville Railroad Company, they believe, and therefore admit, that the Pittsburgh and Connellsville Railroad Company did not approve of, or assent to, the introduction and passage of the said acts; that they have been informed and believe that the said company did submit to and urge upon said legislature, while the said acts were pending, and before they had been presented to the governor, and to the governor after they had been presented to him, their objections to the said acts, and especially to that entitled "An act relating to the Pittsburgh and Connellsville Railroad Company," becoming laws; that the said company was formally heard by counsel before a committee of the legislature in opposition to the passage of the said bills, and afterwards before the governor, to induce him to return the said bills without his aproval. That whether the allegations contained in the preamble to the said act, revoking certain rights and franchises of the Pittsburgh and Connellsville Railroad Company are or are not untrue and without foundation in fact, and whether the legislature, in seeming to approve said allegations by passing said act, were or were not imposed upon and deceived by interested parties, who desired to possess themselves the rights and privileges theretofore granted by said legislature to the said Pittsburgh and Connellsville Railroad Company, are questions in which these defendants are not in any way interested.

65 That the Connellsville and Southern Pennsylvania Railway Company has been duly organized under their charter of incorporation, and have thereby accepted the rights, privileges, and franchises by the said charter conferred. That the said charter requires said company to pay to the Pittsburgh and Connellsville Railroad Company whatever sum may be found due by the appraisers appointed by the governor of this Commonwealth, for or by reason of the expenditures made by them in or upon any line of railroad southwardly or eastwardly from Connellsville; and gives to said Connellsville and Southern Pennsylvania Railway Company the right to purchase from the Pittsburgh and Connellsville Railroad Company all the works so constructed, but that with this exception the said charter does not in any way refer to any property, rights, franchises or privileges, at any time held, possessed, or enjoyed by the said Pittsburgh and Connellsville Railroad Company; and that these defendants, so far as they can answer for and on behalf of said Connells-

ville and Southern Pennsylvania Railway Company, utterly disavow any intention of taking or assuming any of the rights, privileges, and franchises now or heretofore possessed or enjoyed by the Pittsburgh and Connellsville Railroad Company.

And these defendants, so far as they can answer for and on behalf of said Connellsville and Southern Pennsylvania Railway Company, disclaim any intention of taking possession of the said route or road, or any portion thereof, wherever the same may be, of the Pittsburgh and Connellsville Railroad Company, or of appropriating to themselves the property of the said Pittsburgh and Connellsville Railroad, south and east of Connellsville, or elsewhere, or of exercising, or pretending to exercise or control the rights, privileges, and franchises heretofore granted and confirmed unto the Pittsburgh and Connellsville Railroad Company.

And to the several interrogatories to the said bill of complaint annexed, these defendants, each one answering for himself, answering, say:

First. That the requisite number of the commissioners
66 named in the act of assembly of the Commonwealth of Pennsylvania, entitled "An act to incorporate the Connellsville and Southern Pennsylvania Railway Company," which became a law on the 19th day of August, A. D. 1864, have accepted the said act, and have opened books, received subscriptions for the stock of, and organized the said company according to law.

Second. That the said commissioners have opened books for the subscription of the capital stock of the said company; that the said books were opened at Bedford, Pennsylvania, on the 14th day of October, 1864; that one hundred and two thousand two hundred and seventeen shares have been subscribed for, and five dollars on each share, or five hundred and eleven thousand and eighty-five dollars, have been paid in.

Third. That the subscribers for the said stock have organized by the election of officers; and that Thomas A. Scott, Josiah Bacon, John M. Kennedy, Wistar Morris, Edward C. Knight, S. L. Russell, George W. Cass, D. R. Davidson, D. E. Small, J. D. Roddy, Ashbel Greene, and A. K. M'Clure are directors, and John A. Wright is president of the said Connellsville and Southern Pennsylvania Railway Company.

And these defendants pray to be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

WISTAR MORRIS.
A. K. M'CLURE.
S. L. RUSSELL.
JOHN D. RODDY.
D. R. DAVIDSON.

Wistar Morris, one of the defendants above named, being duly affirmed according to law, deposes and says that the facts set forth in the foregoing answer, so far as stated upon his own knowledge, are

true, and so far as stated upon the information of others he verily believes the same to be true.

WISTAR MORRIS.

67 Affirmed and subscribed before me, this 18th day of August, A. D. 1865.

D. P. BROWN, JR.,
United States Commissioner.

Alex. K. M'Clure, one of the defendants above named, being duly sworn according to law, depose and say that the facts set forth in the foregoing answer, so far as stated upon his own knowledge, are true, and so far as stated upon the information of others he verily believes the same to be true.

A. K. M'CLURE.

Sworn and subscribed before me, this 21st day of August, A. D. 1865.

W. W. PAXTON,
Associate Judge of the Court of Common Pleas of Franklin Co., Pa.

George W. Cass, one of the defendants above named, being duly sworn according to law, depose and say that the facts set forth in the foregoing answer, so far as stated upon his own knowledge, are true, and so far as stated upon the information of others he verily believes the same to be true.

G. W. CASS.

Sworn and subscribed before me, this 29th day of August, A. D. 1865.

H. SPROUL,
U. S. Commissioner.

S. L. Russell, one of the defendants above named, being duly sworn according to law, doth depose and say that the facts set forth in the foregoing answers, so far as stated upon his own knowledge, are true, and so far as stated upon the information of others he verily believes the same to be true.

S. L. RUSSELL.

Sworn and subscribed before me, this 16th day of September, A. D. 1865.

A. KING,
Pres. Judge Com. Pleas, Bedford County.

68 UNITED STATES OF AMERICA,
Western District of Penna., ss:

Personally appeared before me, H. Sproul, clerk of the circuit court of the United States for the western district of Pennsylvania, John D. Roddy, one of the defendants above named, being duly

affirmed according to law, doth depose and say that the facts set forth in the foregoing answer, so far as stated upon his own knowledge, are true, and so far as stated upon the information of others he verily believes to be true.

JOHN D. RODDY.

Sworn and subscribed before me, this 22d day of September, A. D. 1865.

H. SPROUL, *Clerk.*

UNITED STATES OF AMERICA,
Western District of Penna., ss:

Personally appeared before me, clerk of the circuit court of the United States for the western district of Pennsylvania, D. R. Davidson, one of the defendants above named, who being sworn as the law directs, did depose and say that the facts set forth in the foregoing answer, so far as they are stated of his own knowledge, are true, and so far as stated from the information of others he verily believes to be true.

D. R. DAVIDSON.

Sworn and subscribed before me, this 25th day of September, A. D. 1865.

H. SPROUL, *Clerk.*

69 And afterwards, to wit, November 23d, 1865, this cause came on for hearing upon bill and answer, and was argued by counsel, and the court, being fully advised in the premises, do order and decree as follows:

It is ordered that the complainants have leave to file a replication to the answer and have an opportunity to try the question of misuse or abuse before a jury, if that question is not previously adjudged by the supreme court of Penna. on the information filed by the attorney general for that purpose.

R. C. GRIER,
Circuit Judge.
WILSON McCANDLESS,
District Judge.

70

71 *Copy of opinion of the court.*

In C. C. U. S. western district of Penna.—In equity.

THE CITY OF BALTIMORE
vs.
THE CONNELLSVILLE AND SOUTHERN PENNA. R. R. CO. *et al.*
} Submitted on bill and answer.

This case was first heard on demurrer to the bill. As the demurrer admitted the truth of the facts stated in the bill the court decided that, assuming the statements of the bill to be true, the complainants

were entitled to the remedy sought, and that the act of assembly complained of was void. But the respondents were permitted to withdraw their demurrer and answer the bill.

72 They have accordingly filed their answer. To this the complainants have filed no replication, but have set their case for hearing on bill and answer. They have therefore undertaken to prove their case by the admission of the answer. When the answer positively denies any fact averred in the bill, the complainant must rebut it by the testimony of two witnesses, or their equivalent: when the respondent does not admit any fact stated in the bill, but protests his ignorance of its truth he does not thereby admit its existence, and if it be material to complainants' case it must be proved by affirmative testimony.

If the respondents had entered a simple and absolute disclaimer and renunciation of all interest in the subject of the demand,

73 yet as the complainant showed sufficient reason for fearing that the respondents might interfere with his rights, having power given them so to do in their act of incorporation, he would have been entitled to a final decree, notwithstanding the disclaimer by respondents of their present intention to interfere with the rightful claim of the complainants.

But the defendants have a right both to disclaim and answer, provided the disclaimer and answer are not inconsistent.

The answer does not admit the statements of the bill as to the interest of the complainant and their consequent right to entertain this bill, but professes entire ignorance on the subject.

74 The respondents, while they disclaim all intention of acting on the assumption of the validity of the act of 1864, which is the subject-matter of complaint in the bill, nevertheless do not admit its invalidity or the truth of the allegations of the bill as to the fact of "misuse or abuse" of their charter.

The bill admits that the act of assembly is not to be presumed to be void or its recitals false; that it is prima facie evidence of a just repeal of the charter, and prays that the validity of the repealing act may be made the subject of judicial inquiry, and that the complainants may have the opportunity of proving that the Pittsburgh and Connellsville R. R. Co. have neither misused or abused their privileges. The burden of proof, therefore, is assumed by

75 them. The respondents, while they disclaim any intention of availing themselves of the privileges given by their charter in case the act of 1864 should be adjudged to be void, refuse to take upon themselves the burden of proving its validity. They allege that a writ of quo warranto was issued on the 11th of May by the supreme court of Penna. on an information filed by the attorney general against the P. & C. R. R. Co., that the company has appeared by counsel and filed a plea to said information, and that this case is still pending and undetermined.

Now, although the initiation of this proceeding since the filing of this bill cannot have the effect of removing the consideration of the question from the jurisdiction of this court, yet the pending of such a

proceeding in the proper court for the purpose of determin-
76 ing the question between the State and the corporation may be a reason for postponing the consideration of this case, as the judgment of the Supreme Court in that case would be conclusive on all parties.

The complainants are not in a situation to demand a final decree in their favor; but are permitted to file a replication, and, if the question be not finally and conclusively settled by the State tribunal before the next term of this court, may have an issue ordered to be tried by a jury, in which, according to the prayer of their bill, they may have an opportunity of proving that the P. &. C. R. R. Co. have neither misused or abused their privileges; and if the issue in the supreme court of the State be decided in favor of the company, the complainant may allege that fact in a supplemental bill, and
77 will be entitled to a final decree. If, on the contrary, the charter of the P. & C. R. R. Co. be annulled in that proceeding, the defendants may allege that fact in a supplementary answer or cross-bill, and the bill will be ordered to be dismissed. It is wholly unnecessary to notice the other murmurings of the answer or charges of dishonesty, fraud, &c., made in the argument of the case.

It is ordered that the complainants have leave to file a replication to the answer, and have an opportunity to try the question of "misuse or abuse" before a jury, if that question be not previously adjudged by the supreme court of Penna. on the information filed by the attorney general for that purpose.

R. C. GRIER, *Cir. Judge.*
WILSON McCANDLESS,
Dist. Judge.

78 And afterwards, to wit, January 8th, 1866, the complainants, by Geo. Shiras, their solicitor, comes and files the following replication:

Copy of replication.

79 THE MAYOR AND CITY COUNCIL OF Baltimore
vs.
THE CONN'E & S. P. R. W. COMPANY *et al.*

The replication of the mayor and city council of Baltimore, complainants, to answers of Connellsville & Southern Pennsylvania Railway Company, and the officers thereof, these repliants, saving reserving unto themselves all right of exceptions to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answers are untrue, uncertain, and insufficient to be replied unto; without this, that
80 any other matter or thing in the said answer contained,

material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these repliants are ready to prove and aver, as this honorable court shall direct, and may, as in and by their said bill they have already prayed.

Jan. 8, 1866.

GEORGE SHIRAS, JR.,
Sol. for Complainants.

81 And afterwards, to wit, May 14th, 1866, the court make the following order.

Copy of order.

THE MAYOR AND CITY COUNCIL OF BALTIMORE
vs.
THE CONNELLSVILLE & SOUTHERN PENNSYLVANIA R. R. Co., and others.

Whereas, by an order heretofore made in this cause on the day of December, 1865, it was ordered that the complainants should have leave to file a replication to the answer, and have an
82 opportunity to try the question of misuse or abuse referred to in the proceedings in the said cause before a jury, if that question shall not have been adjudged by the supreme court of Pennsylvania, on the information filed by the attorney general for that purpose prior to the present term of this court; and whereas it has been made to appear to this court at this time that the complainants have filed the said replication, and that the said question hath not as yet been adjudged by the said supreme court; and whereas in consequence the complainants have by the terms of the said order now the right to an issue to try the said question, and do now appear asking the same.

83 It is ordered this 14th day of May, in the year 1866, that the issue granted by the order of December 16, 1865, be tried at Williamsport, on the 20th of June, 1866, when it will be for the complainants to show to the satisfaction of the jury that the Pittsburgh and Connellsville Railroad Company have neither abused or misused their corporate privileges within the true meaning of their charter and its supplements; and that this shall be taken as the issue to be submitted to the jury.

Per curiam.

H. SPROUL, *Clerk.*

84 *Feigned issue.*

THE MAYOR AND CITY COUNCILS OF BALTIMORE
vs.
THE CONNELLSVILLE & SOUTHERN PENNSYLVANIA Railway Company *et al.* } May term, 1668.

ALLEGHENY COUNTY, *State of Pennsylvania, ss:*

The mayor and city councils of Baltimore, a corporation and citizens of the State of Maryland, complain of the Connellsville & Southern

Pennsylvania Railway Company, a corporation of the State of Pennsylvania, and citizens of the said State, of a plea of trespass on the case upon promises: For that whereas, heretofore, to wit, on the first day of May, 1866, at the county aforesaid, a certain discourse
85 was had and moved by and between the said plaintiffs and the said defendants, wherein a certain question then and there arose, that is to say, whether the Pittsburgh and Connellsville Railroad Company, a corporation of the State of Pennsylvania, had prior to the 29th day of April, 1864, misused or abused their corporate privileges within the true meaning of the act of incorporation of said company, and the supplements thereto; and in that discourse the said plaintiffs then and there asserted that the said Pittsburgh and Connellsville Railroad Company had not, prior to the said 29th day of April, A. D. 1864, either abused or misused their corporate
86 privileges within the true meaning of their act of incorporation and its supplements, which said assertion and affirmation the said defendants then and there contradicted and denied, and then and there asserted and affirmed the contrary thereof, and thereupon, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, in consideration that the said plaintiffs at the special instance and request of the said defendants, had then and there paid to the said defendants the sum of five dollars, lawful money of the United States of America, they, the said defendants, then and there undertook and faithfully promised the said plaintiffs to pay them
87 the sum of ten dollars of like lawful money if the said the Pittsburgh and Connellsville Railroad Company had not, prior to the said 29th day of April, A. D. 1864, misused or abused their corporate privileges within the true meaning of the act of incorporation of said company and its supplements, and the said plaintiffs in fact say that the said the Pittsburgh and Connellsville Railroad Company had not, prior to the said 29th day of April, A. D. 1864, either misused or abused their corporate privileges within the true meaning of their act of incorporation and its supplements, whereof the said defendants duly had notice, whereby they, the said defendants, then and there became liable to pay, and ought to have paid, to the said
88 plaintiffs the said sum of ten dollars; yet the said defendants, disregarding their said promise and undertaking, have not paid the said plaintiffs the said sum of ten dollars, or any part thereof, though often requested, to the damage of the said plaintiffs of the sum of ten dollars, to recover which, and costs, they brought this suit, &c.

GEORGE SHIRAS, JR.,
Plaintiff's Att'y.

And the said defendants, by Walter H. Lowrie, their attorney, come and defend the wrong and injury, when, &c., and say that the said plaintiffs ought not to have or maintain their aforesad action
89 thereof against them, because they say that though it is true that the said discourse was had and moved by and between the said plaintiffs and the said defendants, wherein the said question did

arise, as aforesaid, and that these defendants did undertake and promise, in manner and form as the said plaintiffs have above alleged in that behalf; nevertheless, for plea in this behalf, the said defendants say that it is not true, as alleged in the said declaration, that the said the Pittsburgh and Connellsville Railroad Company had not, prior to the said 29th day of April, A. D. 1864, misused or abused their corporate privileges within the true meaning of their act of incorporation, and its supplements, in manner and form as the said
90 plaintiffs have above in that behalf alleged, and of this the said defendants put themselves upon the country.

W. H. LOWRIE,
For Deft's.

And the said plaintiffs do the like.

GEORGE SHIRAS, JR.,
For Plff's.

91 And afterwards, to wit, June 21st, 1866, in pursuance of the order of the court, made on the 14th day of May, 1866, the following proceedings were had on the law side of the court, to wit:

No. 90 of November term, 1866.

THE MAYOR AND COUNCILS OF BALTIMORE *vs.* THE CONNELLSVILLE AND SOUTHERN PENN'A Railway Co., the Pittsburgh and Connellsville Railroad Company, and others.	Common law docket. Feigned issue.

Issue of fact ordered by the court in No. 7 of May term,
92 1865, in equity, viz: whether the Pittsburgh and Connellsville Railroad Company had, prior to the 29 day of April, 1864, misused or abused its corporate privileges according to the true meaning of its act of incorporation and its several supplements.

The parties in this case being at issue, a jury being called, came, viz: G. W. Kenney, Thomas Myers, Thomas McConnell, William Gidebin, John A. Merchond, Jesse Merrell, C. V. Derreckson, H. S. Garretson, William A. Mickey, R. D. Cummings, S. P. Ross, and Henry W. Watson, twelve good and lawful men, who, having been duly summoned, returned, balloted for, empannelled, and sworn, do say:

We, the jury sworn to try the issue joined in the above
93 cause, to wit, whether the Pittsburgh and Connellsville Railroad Company, prior to the 29th day of April, 1864, abused or misused their corporate privileges within the true meaning of their act of incorporation and its supplements, do say that the said Pittsburgh and Connellsville Railroad Company did not abuse or misuse

its corporate privileges within the true meaning and intent of its act of incorporation, and its supplements thereto.

(Signed) R. D. CUMMINGS.
WILLIAM GIDEBEN.
W. A. MICKEY.
H. A. GARRITSON.
GEO. W. KENNEY.
S. P. ROSS.
HENRY W. WATSON.
E. V. DERRECKSON.
J. A. MERCHOND.
THOMAS MEYERS.
THOS MAC CONNELL.
JESSE MERRILL.

94 During the progress of the trial in this cause the following offers were made and allowed, or overruled by the court, to wit:

The plaintiffs present the following propositions of law:

1st. That the question of the right of the Pittsburgh and Connellsville Railroad Company to build their road to the State line, and to there connect with any other improvement, whether canal or railroad, is a question of law arising under their act of incorporation and the supplements thereto, and under the averments of the bill that such question of law has been heretofore argued by counsel and decided by the court, and is not now open for argument before the jury.

2d. The court is requested instruct the jury: That the
95 question whether the Pittsburgh and Connellsville Railroad Company have the right, under the legislation of Pennsylvania pertaining to said company, to build their road to the State line, and to there connect with another railroad authorized by the State of Maryland, is a question of law dependent upon the construction of the said company's original act of incorporation, and the supplements thereto; and that the decision of said question is for the court and not for the jury under the issue they are to try.

Defendants then made the following offers:

COPY OF OFFERS.

96 *Offer No.* 1.

The defendants, to maintain the issue on their part, now offer to show that the P. & C. R. R. Co. had at, and immediately before, the time of the passage of the act of assembly of 11 April, 1864, on their book 7,747 shares of stock unpaid and yet uncollected, and that the said company has not yet collected the same, or made the slightest effort to do , but allowed and do yet allow the same to stand unpaid, and that so the State has been defrauded and wronged by the said company, and is wilful omission to perform the plain duty of collecting the stock subscribed, and appropriating it to the work undertaken to be done.

97 The plaintiffs object to the foregoing offer because—

1st. That the evidence offered does not prove or tend to prove any act of misuse or abuse by the P. & C. R. R. Co. of any of the privileges granted by their charter, within the true meaning of their act of incorporation and its supplements.

2d. That the offer is to disclose alleged acts of abuse or misuse not set forth in the repealing act of 1864.

3d. The offer does not propose in its terms to restrict the evidence to facts between the 11th day of April, 1856, and the 29th day of April, 1864.

Per curiam: This offer is overruled; proceed with another branch of your case.

Per curiam.

98 *Offer 2d.*

The defendants by way of proving and maintaining the issue on their said offer to show that the Pittsburgh and Connellsville R. R. Co. did, prior to the 11th day of April, 1864, to wit, some time during the year 1847, misuse and abuse its privileges and franchises in this: that the said company did corruptly and wrongfully, and in direct violation of its charters, abandon the work which by accepting its charter it undertook to do, and transferred its privileges to another association for the purpose of making another road running from Pittsburgh to the Ohio State line; and the defendants propose to follow this by showing that the fraud, so as aforesaid committed by the P. & C. R. R.

99 Co. was taken advantage of by the stockholders, who refused to pay their subscriptions, and in consequence thereof the said P. & C. R. R. Co. is now and has been ever since unable to collect the said stock, and thereby is and has been by its own fraud and corruption been deprived of its means to make the said road.

The plaintiffs object to the foregoing offer—

1st. Because the act complained of was done under and by virtue of an act of assembly of Penn'a, approved 15th March, 1847, and was therefore neither abuse nor misuse within the meaning of the charter of the P. & C. R. R. Co.

2d. Because the act proposed to be proven took place prior to the 11th day of April, 1856, the date of the condoning act.

The offer is overruled.

Per curiam.

100 *Offer No. 3.*

Defendants now offer to prove that the P. & C. R. R. Co., prior to 29th of April, 1864, to wit, about the year 1855, did abuse and misuse its franchises by wilfully, fraudulently, and illegally taking possession of a part of the canal belonging to the State of Pennsylvania, in the city of Pittsburgh; that the present State authorities, to wit. the canal commissioners, commenced legal proceedings against the said

company and compelled it to remove its road from that place by the final decree of the supreme court.

The plaintiffs object to the foregoing offer because—

101 1st. The act proposed to be proved was not an act of abuse or misuse within the true meaning of the act of incorporation of the P. & C. R. R. Co.

2d. Because the said act is not alleged against said company as a ground of such repeal by the repealing act of 1864.

3d. Because the act proposed to be proven took place prior to the act of 1856, condoning the previous conduct of the said company.

Offer overruled per curiam.

102 *Offer No. 4.*

The defendants now offer to prove that the P. & C. R. R. Co. did, prior to the act of 29th April, 1864, abuse and misuse its franchises in this: that said company procured, by the solicitation of its officers and corporators and other agents, appointed for that purpose, a subscription to be made to its capital by the city of Pittsburgh to the amount of $500,000; and another subscription of $750,000 by the county of Allegheny, taking therefor the bonds of the said city and county on which the said company promised that it would pay the interest, and save the said city and county therefrom harmless and indemnified; but the said company falsely, fraudulently, in

103 violation of its charter, and against the law of the land, did negotiate and sell the bonds so taken, squandered the proceeds, and then refused to pay the interest or any part thereof, but suffered it to accumulate until the present time, whereby the said company has become inextricably involved in debt, totally without credit and the means of making any part of the work which it undertook to make.

The plaintiffs objects to the foregoing offer—

1st. Because the acts proposed to be proved are not acts of misuse or abuse within the meaning of these terms in the charter of the Pittsburgh and Connellsville R. R. Company.

104 2d. Because such acts are not complained of by the city of Pittsburgh and the county of Allegheny.

3d. Because said acts are not stated as ground for repealing said charter, in the repealing act of 1864.

4th. Because some of the said acts were anterior to the date of the condoning act of 1856, and were remedied, if irregular, by the terms of that act.

Offer overruled per curiam.

105 *Offer No 5.*

The defendants now offer to prove that the P. &. C. R. R. Co. did, prior to the act of 29 April, 1864, abuse and misuse its charter privileges in this: that the said company falsely, fraudulently, and illegally cheated the city of Pittsburgh and county of Allegheny out of the

sum of one million two hundred and fifty thousand dollars in bonds, on which said company promised to pay the interest, by negotiating and transferring said bonds, and then refusing to pay the interest, and also by misapplying the proceeds of said bonds to the great detriment of said city and county, and to the discredit of the Commonwealth, and this subsequent to the 11th of April, 1856.

106 (Mr. Cuyler's interlineation between the fifth and sixth lines from the bottom was made before being overruled by the court, June 25, 1866.—J. D. R.)

The plaintiffs object to the foregoing offer—

1st. Because the acts alleged are not acts of abuse or misuse within the meaning of the act of incorporation of the P. & C. R. R. Co.

2d. Because the acts alleged in the offer are not complained of by the city of Pittsburgh or the county of Allegheny.

3d. Because after the date of said acts, or alleged acts, the

107 legislature of Pennsylvania have continued, by various acts now in evidence and constituting supplements to the charter, to recognize the said company as an existing and legal corporation.

Offer overruled per curiam.

108 *Offer No. 6.*

The defendants now offer to prove that the P. & C. R. R. Company, prior to the act of 29 April, 1864, did misuse and abuse its franchises and privileges, in this: that in the year 1861, or thereabouts, it failed, and fraudulently refused to pay the interest on the bonds of the city of Pittsburgh and the county of Allegheny, and caused the whole burden of paying such interest to be thrown upon the said city and county; and in consequence thereof, not only the said company became utterly without credit, but the said city and county became so embarrassed that upon suits against them by the holders of said bonds, their stock in the said company was sold at marshal's

109 sale for about one-sixth of one per cent. on their par value: the president of the said company buying in said stock for the use of the Balt. & Ohio R. R. Co., a foreign corporation.

The plaintiffs object to the foregoing offer—

1st. Because the acts proposed to be passed are not stated as grounds for repealing the charter in the repealing act of 1864.

2d. Because if true said acts could only be complained of by the city of Pittsburgh and county of Allegheny, who have not so complained, and who are not parties to this issue.

3d. Because, even if true, they are not such acts of abuse or misuse as to come within the meaning of these terms in the charter of said company.

4th. Because said depreciation of the stocks of the P. & C. R. R. Company on the bonds of the city of Pittsburgh and county of

110 Allegheny was owing to their own failure to pay the interest upon their said bonds, as they were bound to do by the terms of said bonds, to the holders thereof, independent of the contract

between said corporation and the Pittsburgh and Connellsville R. R. Company.

Offer overruled per curiam.

111 *Offer No. 7.*

The defendants now offer to give in evidence the annual reports of the pl'ff prior to 1856, together with the annual accounts of their treasurer showing the same period, for the purpose of showing the state and condition of the pl'ff's affairs prior to the act of 11 April, 1856, and enabling the jury to to judge whether, since that time, the said pl'ffs have been guilty of any misuse or abuse of their privileges, according to their actual ability, or according to their duty.

The plaintiffs object to the foregoing offer—

1st. Because there is nothing, in the reports of the said company prior to the report of 1856, stated in the repealing act of 1864,

112 as grounds for the repeal of the charter of said company.

2d. Because the said reports contain nothing from which the jury could be legally permitted to find said company were guilty of any misuse or abuse of its privileges, within the meaning of these terms, in the charter of said company prior to the 11th day of April, 1856.

3d. Because the offer is made to show facts occurring prior to the date of the condoning act of 1856, and is in disregard of the previous rulings of the court.

Offer overruled yer curiam.

113 *Offer No. 8.*

The defendants now offer the annual report of the treasurer's report for the year 1855, for the same purpose as stated in the offer No. 7.

Plaintiffs object for the same reasons as those stated to the previous offers.

Offer overruled per curiam.

114 *Offer No. 9.*

The defendants, further to maintain the issue on their part, now renew their several offers heretofore made, and show acts of malfeasance and misfeasance, such as amount to a misuse and abuse of corporate power and right, prior to the so-called condoning act of 1856, and this renewed offer now made in view of and in consequence of the additional proofs received since said offer was made, and especially in view of the admission of the bill and answer and replication in evidence.

The plaintiffs object to the foregoing offer—

1st. Because the question as to the operation of the act of 11th April, 1856, in this connection, which it raises, has already

115 been more than twice properly decided by the court.

2d. Because the said condoning act is not construed independently of any evidence in pais, or of anything in the bill, answer, and replication.

3d. Because the said condoning act curing all alleged acts of misuse and abuse prior to 11th April, 1856, the only question under the issue now to be tried is, whether the company misused or abused its charter, within the meaning of the 20th section of the same, since the date of the passage of said condoning act, and no evidence of any kind not bearing upon that issue is admissible.

Offer overruled per curiam.

116 16 *points by def'ts.*

Question to be determined by the jury is—

1st. Whether the P. & C. Railroad Company was at any time prior to the 29th April, 1864, guilty of abusing or misusing its franchises and privileges.

2. This question must be decided in the affirmative and the verdict must be in favor of the defendants, if the jury believe that the P. & C. R. R. Co. has at any time previous to the date above mentioned wilfully done any acts which is a violation of its charter or the general law of the State and injurious to the public interest.

117 3. The act of assembly of 29th April, 1856, repealing the charter of the P. & C. R. R. Co. is of itself evidence that the company had prior to that time abused or misused its charter, and the jury has no right to presume that the legislature passed that act without constitutional authority to do so.

4. Therefore unless the P. & C. R. R. Co. has proved by affirmative and clear evidence that they did not misuse or abuse its privileges the verdict must be for the defendants.

5. If the company was incorporated to make a road to a certain place designated by the law and used the power given to it
118 and the money obtained under its charter for the purpose of making another road at a different place or on a route not expressly and plainly authorized by its charter, it is guilty of misuse and abuse.

6. If the company with a charter which authorized it to make a road to Smithfield, or any place within the State on the waters of the Youghiogheny, undertook and agreed to expend its means and exercise its powers for the purpose of making a road to Cumberland on the waters of the Potomac and in the State of Maryland, it was guilty of a gross and impudent fraud, and this is a clear case of abuse and misuse.

119 7. The power given by the act of the 18th April, 1853, to extend the road to any point in Bedford and Fulton counties to connect with the Franklin and Allegheny railroad, or any other road that may be made, does not justify or excuse the conduct of the company in making or agreeing or attempting to make a road to Cumberland.

8. The expenditure of $220,000 at the Sand Patch tunnel on the

route to Cumberland; the survey of that route through the State of Maryland to Cumberland; the agreement with the city of Baltimore to make the road to Cumberland; the acceptance of the Maryland law which required it to be done; all these acts are fraudulent
120 and illegal, and such an abuse and misuse of the charter as justified fully the repealing act of 1864.

9. The failure since 1864 as well as previously of the company to pay interest on the bonds of Allegheny county and Pittsburgh, as by contract it was bound to do, was not only a fraud upon the said city and county, but an abuse of the charter aggravated by the subsequent sale of the stock for which the bonds were given and the purchase of them by the president of the P. & C. R. R. Co. for the use of the Baltimore and Ohio R.R. Co., a foreign corporation, at an enormous sacrifice.

121 10. That the P. & C. R. R. Co. have no authority of law for crossing the boundary which separates Penn'a from Maryland or for connecting with a road in the State of Maryland, and that such an intention upon the part of said company evidenced by positive acts, such as the expenditure of money and the formation of contracts for the construction of a road which, if built, would cross the boundary of the State, constitute a misuse and abuse of their corporate rights.

11. That a delay of 19 years in completing the road they were authorized to build, even if condoned by the act of 1856, if fol-
122 lowed by a still further delay of eight years, at the expiration of which large parts of the work remained unfinished and not even under contract, constitutes of itself a misuse and abuse of their corporate rights.

12. That the expenditure of large amounts of money at the Sand Patch tunnel, and at other points not on the line of the road authorized by law to be built, constitutes a misuse and abuse of their charter.

13. That the failure to provide a capital stock by individual subscription, or to make an effort so to do, and the dependence upon corporate and municipal subscription, constitutes a misuse and abuse of their charter.

123 14. That the act of 1856 does only condone acts of omission or negligence, not those of designed and wilful wrong or perversion of duty or of positive misfeasance, and that such acts, if proven, although occurring prior to 1856, are to be considered by the jury and constitute a misuse and abuse of corporate power.

15. That a railroad company cannot cross the boundary line of the State or unite with a railroad in another State without express authority of law to do so, or without authority derived by an irresistible implication from the language of its charter.

124 16. That a power to cross the boundary or unite with a railroad in another State cannot be inferred from the 7 sec. of the act of April 18, 1843, because there the limitation is express to an extension "within this Commonwealth;" nor can it be inferred

from the 6 sec. of the act of April 18, 1843, because the limitation as to any point they may select in Somerset or Bedford counties.

In the usually emphatic language of my brother Grier, I refuse to answer this catechism.

Per curiam.

125 Circuit court of the United States, western Pennsylvania, at Williamsport, June term, 1866, in equity.

THE CITY OF BALTIMORE
vs.
THE CONNELLSVILLE AND SOUTHERN PENNSYLVANIA Railway Company *et al.*

Judge M'Candless instructed the jury as follows:

I regret very much that in the trial of this issue I have not had the assistance of my brother, Mr. Justice Grier, whose severe indisposition has prevented him from taking his seat on the bench at this term. His high judicial reputation, co-extensive with the Union, would have given a great moral effect to the instructions which it is the duty of the court to utter for your guidance. That is not expected in what may be said by me.

This is an issue out of chancery to inform the conscience of the chancellor as to a question of fact which cannot be reviewed elsewhere, and I have only to instruct you as to what constitutes "misuse and abuse" of the franchises of a corporation. Your verdict, for either party, in making his decree, the chancellor may disregard altogether.

126 You will have perceived, during this protracted and interesting investigation, that the legislature of Pennsylvania, by an act passed the 28th of April, 1864, and which, the governor of the State refusing to sign under a provision of the constitution, became a law on the 19th of August of the same year, repealed the charter of the Pittsburgh and Connellsville Railroad Company. That law this court declared to be unconstitutional, being a "law impairing the obligation of a contract" which the State of Pennsylvania made with a corporation, and which is in violation of the Constitution of the United States.

As there was a writ of quo warranto, at the instance of the attorney general of the State, pending in the Supreme Court, we deemed it due to the parties litigating, as well as a proper courtesy to that high court, that an opportunity should be afforded to the law officer of the Commonwealth to inquire, in that tribunal, whether the Pittsburgh and Connellsville Railroad Company had "misused or abused" its corporate franchises. Ample time was allowed for that purpose, and no further proceedings having been taken by the attorney general. this court directed an issue to try the question of fact.

You have listened for many days to the testimony on both sides, given by respectable and intelligent witnesses, and to able and distinguished counsel, who have exerted their great powers to illustrate

the details in evidence, and it now becomes the duty of the court, briefly to explain the principles of law applicable to the case. Upon your verdict may depend what our final decree will be.

In this examination we have limited the inquiry to acts of omission and commission on the part of the corporation subsequent to the date of the condoning act of the State of Pennsylvania of the 11th of April, 1856, upon the faith of which the city of Baltimore loaned her credit, and paid one million of dollars. Any offence against the sovereignty of the State of Pennsylvania she pardoned by the act of her legislature of that date. You will therefore ascertain from
127 the testimony, and inform us by your verdict, whether the Pittsburgh and Connellsville Railroad Company, since the year 1856, has "misused and abused" the franchise granted to it by the State of Pennsylvania.

"There can be no 'abuse or misuse' without a positive act of malfeasance. This, to furnish ground of forfeiture, must be wilful. It must be something more than accidental negligence, excess of power, or mistake in the mode of exercising an acknowledged power."

"There is nothing profound or mystical about these words 'misuse or abuse.' They are not terms of art in the law. The popular sense in which they are used every day is well known. To abuse is composed of ab and utor; and in strictness it signifies to injure, diminish in value, or wear away by using improperly."

"Misuse is a still simpler word. It signifies merely to use amiss. But I admit that these words, like all others, may have different meanings when spoken with reference to different subjects. Acts which would be an abuse of one thing may be no abuse of another. We are therefore to ascertain precisely what is 'abuse or misuse' of the corporate privileges by the company. Abuse includes misuse. We take them both together and define them thus: Any positive act in violation of the charter, and in derogation of public right, wilfully done, or caused to be done, by those appointed to manage the general concerns of the corporation."

Such is the definition of "misuse or abuse" adopted by this court, and you will apply it to the facts given in evidence, accordingly.

As to the sixteen points submitted by the learned and able counsel for the respondents, as well as the two by those of the complainants, I dismiss them; and in the usually emphatic language of my brother Grier, I decline to answer such a catechism, except as to the sixteenth point made by respondents, and the two points made by complainants' counsel.

I answer, distinctly, that under the act of the 18th of April,
128 1853, the Pittsburgh and Connellsville Railroad Company have the right to make their road to the Maryland line, and to connect there with any road authorized by the State of Maryland.

The case now on trial is one of great national importance. It was not the design of the wise framers of the Constitution, nor is it now the policy of the government and people of the United States, that any Commonwealth shall be permitted to place restrictions upon commerce between the States of the Union. Our territory is so vast in

extent, embracing such a variety of soil, climate, and mineral wealth, and, with a restored and unbroken nationality so capable of future and further extension and development, that both for military and commercial purposes, the mere imaginary boundary lines of States are not to be considered upon the map of the Union. It seems too much like the European system of "viseing" passports at the dividing line of every petty monarchical principality.

The propriety and necessity of this very road has been recently agitated in Congress, and a bill, looking to its early construction has passed its popular branch. It crosses Mason and Dixon's line. In the midst of many States it will be an iron band of public utility, contributing largely to the unity and perpetuity of the United States. It should be made; placing, as it will, the fertile fields of the great west and the lakes in direct communication with tide-water and the seat of the general government.

WILSON M'CANDLESS,
U. S. District Judge, sitting at Circuit.

The jury, after an absence of less than ten minutes, brought in the following:

129 The complainants' solicitors here ask leave to file the papers offered in evidence on the trial before the jury, in the equity suit No. 7, of May term, 1865, to wit: A, B, and C, and exemplifications of a mortgage from the P. and C. Railroad Co. to Charles M. Keyser and Robert E. Wright, which was allowed and papers filed.—(See copies annexed.)

And now, to wit, June 28th, 1866, the complainants' counsel present to the court the following certificate of the clerk of the finding of the jury in the issue at law in the case of the Mayor and City Councils of Baltimore *vs.* the Connellsville and Southern Penna. Railway Company, the Pittsburgh and Connellsville R. Road Company, and others.

130 *Copy of clerk's certificate.*

UNITED STATES OF AMERICA, *Western District of Penna., ss:*

I, Henry Sproul, clerk of the circuit court of the United States for the western district of Penna., do hereby certify that the jury sworn to try the issue joined between the mayor and city councils of Baltimore and the Connellsville and Southern Penna. Railway Company, the Pittsburgh and Connellsville Railroad Company, and others, to wit: Whether the Pittsburgh and Connellsville Railroad Company, prior to the 29th day of April, 1864, misused or abused their corporate privileges according to the true meaning of their act of incorporation and its several supplements, did return a verdict that they had not misused or abused their corporate privileges ac-
131 cording to the true meaning of their act of incorporation and its supplements.

H. SPROUL, *Clerk.*

And now, to wit, June 28th, 1866, the complainants' counsel now move the court for a final decree and injunction, to which the counsel of the respondents object as follows:

The plaintiffs having moved for a final decree on the bill, answers, and replication, the defendants object thereto until the proofs are, etc., unless the plaintiffs will consent to withdraw their replication or admit the facts averred in the answers to be true, except
132 the fact of non-abuse and misuse found by the jury.

This is declined by the pl'ff, and the court overrule the objection and direct the cause to proceed.

By the court.

H. SPROUL, *Clerk.*

And now, June 28th, 1866, the respondents' solicitors move the court to appoint a future day for the hearing of this cause upon the bill, answers, replication, and proofs.

Overruled by the court.

H. SPROUL, *Cl'k.*

And now, to wit, June 28, 1866, the respondents by their solicitors move the court to refer this cause to a master to take
133 testimony and report to the court.

Overruled by the court.

H. SPROUL, *Cl'k.*

June 28th, 1866. The defendants' counsel moves for leave to amend their answer in a matter of fact recently discovered, that the mortgage of the defendant to the plaintiff is fully secured by an annual net income that is abundantly adequate to pay the debt of the Pittsburgh and Connellsville Railroad Company, independent of the further extension by them of the road, which the act of 1864 is intended to prevent.

Allowed by the court.

H. SPROUL, *Clerk.*

134 *Final decree.*

And now, to wit, June 28th, A. D. 1866. this cause came on to be heard and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz: That the act of the general assembly of Pennsylvania of the 19th of August, A. D. 1864, entitled "An act relative to the Pittsburgh and Connellsville Railroad Company," and such portions of the act of the general assembly of the State of Pennsylvania of the 19th of August, A. D. 1864, entitled "An act to incorporate the Connellsville and Southern Pennsylvania Railway Company," as confer upon the said the Connellsville and Southern Railway Company any of the rights and franchises of the said the Pittsburgh and Connells-
135 ville Railroad Company, are, and are hereby adjudged to be, unconstitutional, null and void, and of no force or effect: that

the said the Connellsville and Southern Pennsylvania Railway Company, their agents and servants be, and hereby are, perpetually enjoined and commanded, from henceforth, altogether to absolutely desist from taking possession of or in anywise interfering with the route and road, and rights and franchises of the said the Pittsburgh and Connellsville Railroad Company, and from pretending or asserting any right or title thereto, and from instituting any action at law or proceeding in equity for the recovery of the possession of the route and road of the said the Pittsburgh and Connellsville Railroad Company, or any part thereof. And it is further ordered and decreed,
136 that the said the Pittsburgh and Connellsville Railroad Company be, and the said company are, hereby perpetually enjoined and commanded, that the said company do not in anywise accept, ratify, or recognise as binding the act of assembly entitled "An act relative to the Pittsburgh and Connellsville Railroad Company:" And its further ordered that the said the Connellsville and Southern Pennsylvania Railway Company do pray unto the said complainants their costs of suit, the same to be taxed by the clerk on five days notice to the solicitors of the said the Connellsville and Southern Pennsylvania Railway Company.

WILSON McCANDLESS,
U. S. District Judge, sitting at Circuit.

137 And now, July 30th, 1866, the respondents' counsel severally pray an appeal to the Supreme Court of the United States, which is granted and allowed, and the affidavits that the same are not taken for delay are severally hereto annexed.

Respondents severally take their appeals, and this record is certified to the Supreme Court accordingly.

H. SPROUL, *Clerk.*

And now come the complainants and join in the said appeal and move the citation.

H. SPROUL, *Clerk.*

138 *Exception to the decree of the court.*

UNITED STATES, *ss:*

In the circuit court, west. dist. of Penn'a.

CITY OF BALTIMORE
vs.
THE CONNELLSVILLE & SOUTHERN Pa. Railway Co.

The defendant excepts to the decree proposed by the plaintiff in this case for the following reasons:

1. It is altogether indefinite in stating the portions of the act of assembly incorporating the defendants' company which it proposes to declare null and void.

2. Because it is altogether indefinite in declaring whatever
139 rights and franchises of the Pittsburgh and Connellsville Railroad Company it proposes to restrain the defendant from interfering with or laying a claim to.

3. Because it proposes to prevent the defendant from instituting any suit in law or equity for the vindication of its rights as against the Pittsburgh and Connellsville Railroad Company.

W. H. LOWRIE, *for Def't.*

July 6, 1866.

140 We, the undersigned, counsel of the parties, do hereby agree that the notes of testimony taken on the trial of the issue joined on the law side of the court by Messrs. Latrobe & Roddy, marked severally X and Y, and hereto annexed, may be read on the hearing of the appeal before the Supreme Court of the United States at Washington city, without objection by either party.

GEORGE SHIRAS, JR.,
Sol. of the Mayor and City Council of Baltimore.
W. H. LOWRIE,
For C. & S. P. R. W. Co.

141 UNITED STATES OF AMERICA,
Western District of Penn'a, ss:

I, Henry Sprou, clerk of the circuit court of the United States for the western district of Pennsylvania, do hereby certify that the foregoing is a true and correct exemplification of the record and proceedings in the foregoing case, as full and complete as the same remains on file and of record in this court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Pittsburgh, this day of November, A. D. 1866.

[L. S.] H. SPROU, *Clerk.*

142 *Papers referred to as in evidence and allowed to be filed in this case.*

A.

An ordinance to guarantee the bonds of the Pittsburgh and Connellsville Railroad Company:

SECTION 1. *Be it enacted and ordained by the mayor and city council of Baltimore,* That the register of the city shall, as hereinafter provided, upon presentation to him of the bonds of the Pittsburgh and Connellsville Railroad Company, amounting in the aggregate to the sum of one million of dollars, payable on the first day of January, in the year eighteen hundred and eighty-three, or at any time thereafter at the pleasure of the city, if the Pittsburgh and Connellsville Railroad Company
143 should fail then to meet the *the* payment thereof with interest, at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year, at some place to be therein designated in the city of Baltimore, and convertible into the stock of said company at par, at the pleasure of the holder, cause the same to be indorsed by the guarantee of the city of Baltimore, to be signed by the mayor of said city, for the time being, with the corporate seal of the said city thereto affixed, in the following words, to wit: For value received, the mayor and city council of Baltimore do hereby guarantee the payment of the within bond for $———, with the interest thereon, according to its tenor, under the authority of an act of the general assembly of Ma-
144 ryland, passed at January session, 1853, entitled "An act giving certain powers to the mayor and city council of Baltimore, in regard to the Pittsburgh and Connellsville Railroad," and in pursuance of an ordinance of the said mayor and city council pass on the —— day of ——, in the year 1853, entitled "An ordinance to guarantee the bonds of the Pittsburgh and Connellsville Railroad Company."

$1,000,000.

Time of redemption of bonds

6 per cent. per annum, semi-annually, Jan'y 1 and July 1, in Baltimore.

Bonds convertible into stock at pleasure of holder.

Signed by mayor or with corporate stamp.

Form of indorsement.

In testimony whereof , mayor of the city of Baltimore, hath hereunto subscribed his name, and caused the corporate seal of the mayor and city council of Baltimore to be hereunto affixed, on this day of , in the year eighteen hundred and fifty .

[SEAL.] ——— ———, *Mayor.*

145 SEC. 2. *And be it enacted and ordained,* That before the register shall deliver to the Pittsburgh and Connellsville Railroad Company the bonds required by the first section of this ordinance to be guaranteed by the mayor and city council of Baltimore, he shall require a certificate of the Pittsburgh and Connellsville Railroad Com-

Conditions.

President's affirmation.

pany, verified by the oath or affirmation of the President of said company, that there have been reliable subscriptions to the capital stock of said company, in the aggregate, to a sum not less than two millions of dollars, and of which instalments not less than one-fourth of the whole shall have been paid; and the said register shall also require from the said Pittsburgh and Connellsville Rail-

$2,000,000 stocks, to be subscribed and ¼ paid.

Deed and trustees

146 road Company a good and sufficient deed or deeds, to be executed to such party or parties, and recorded at such time or times as the said register shall designate, pledging the real and personal estate, road or roads, tolls and revenue of said company, as security for the guarantee of the bonds aforesaid; and he shall further require from the said company an obligation providing for the expenditure of the moneys arising from the sales of these bonds upon the construction of the railroad between Pittsburgh and Cumberland, pari passu with the moneys from the stock subscription; and he shall further require from the said company an obligation providing that the construction of said road shall commence simultaneously at Pittsburgh and Cumberland, or any other point, when said road shall connect with the Baltimore and Ohio railroad; and that for every two miles of said railroad completed from Pittsburgh eastwardly, one mile of said railroad shall be completed from Cumberland, or other place of connection with the Baltimore and Ohio railroad, westwardly; and he shall further require the said Pittsburgh and Connellsville Railroad Company to enter into a permanent obligation or contract in writing with the mayor and city council of Baltimore, to be lodged with the register, not to discriminate in the tolls or charges for transportation of passengers or merchandise, in the management or working of said road in anywise to the prejudice or injury of the city of Baltimore or of the Baltimore and Ohio Railroad Company, or to divert the trade or travel from the city of Baltimore to any other city or point on the seaboard, but in fixing their tolls or transportation charges both on tonnage and passengers, they shall in no case exceed those charges by the Baltimore and Ohio Railroad Company, which obligation or contract shall, in addition, bind the said Pittsburgh and Connellsville Railroad Company to choose at least three directors of said company residing in the city of Baltimore at each election for directors therein.

Construction to be proceeded with, pari passu, &c.

Construction to commence simultaneously at Pittsburgh and Cumberland.

147

One mile from Cumberland to 2 miles from Pittsburgh.

Contract not to discriminate, &c.

148

Three directors to be chosen residing in Baltimore.

SEC. 3. *And be it enacted and ordained*, That the bonds to be issued by the Pittsburgh and Connellsville Railroad Company, not exceeding in the aggregate one million of dollars, and to be guaranteed by the mayor and city council of Baltimore, shall be issued in sums of five hundred and one thousand dollars each; and it is further ordained that the said bonds shall not be

149

Bonds not to exceed $1,000,000.

$500 and $1,000 each.

disposed of for less than par; and if any premium shall be realized on the sale of said bonds, which sale shall be made only with the assent of said register of the city of Baltimore, as to the times and places of advertising and receiving bids for the same, so as to cause them to sell for the highest market value, the gross amount of premium, whatever it may be, shall be paid over to the said register for the use and benefit of the city of Baltimore, for the establishment of a sinking fund for the extinguishment of the city debt; and the register shall open upon his stock-books a separate account for the bonds aforesaid, and make a report of the same to the mayor and city council of Baltimore at their regular annual sessions.

Conditions regulating sale of bonds.

Premium to be paid to register.

Sinking fund.

SEC. 4. *And be it enacted and ordained*, That in the event of non-payment by the said Pittsburgh and Connellsville Railroad Company of the interest, or any part thereof, when due on the said bonds, the mayor and city council of Baltimore shall immediately assume the payment thereof, and the faith of the said mayor and city council of Baltimore is hereby solemnly pledged to take all such steps as may be necessary to enable them to meet without delay the liabilities incurred by the guarantee hereby authorized under the power given them by the act of the general assembly of Maryland aforesaid; and for that purpose, should the city council not be in session, the same shall be convened forthwith, to the end that the holders of said bonds may be subjected to no unavoidable delay in the punctual payment of interest and principal according to the tenor of their bonds.

Provision in case of non-payment of interest.

SEC. 5. *And be it enacted and ordained*, That this ordinance shall not go into effect until it and the provisions and conditions thereof are fully accepted by the said Pittsburgh and Connelisville Railroad Company.

Ordinance to be accepted by P. & C. R. R. Co.

JOHN S. BROWN,
President of the 1st Branch.
JOHN B. SEIDENSTUCKER,
President of the 2nd Branch.

Approved 24 June, 1853.

J. SMITH HOLLINS, *Mayor.*

CITY REGISTER'S OFFICE,
Baltimore, August 11, 1853.

Register's certificate.

I, John J. Graves, register of the city of Baltimore, hereby certify that the foregoing is a true and exact copy of the original ordinance of which it purports to be a copy, as made from said original now on file and remaining in this office.

Given under the corporate seal of the city of Baltimore, the day and year above written.

JOHN G. GRAVES, *Reg'r.*

153 B.

A supplement to an ordinance entitled "An ordinance to guarantee the bonds of the Pittsburgh and Connellsville Railroad Company," approved June 24, 1853.

Whereas by the ordinance to which this is a supplement, a mode of procuring assistance to the Pittsburgh and Connellsville Railroad Company was provided by a guarantee by the city of Baltimore of one million of dollars of the bonds of said company, which mode of assistance the said company now represents to be unavoidable under the terms of said ordinance, and makes application to the city of Baltimore to change the form of the said aid from a guarantee by the *by the* city of said company's bonds into the city of Baltimore's own bonds, the latter to be issued in substitution for the former.

And whereas the city is disposed to accede to said request,
154 upon condition that the said company shall execute with the said city such a compact as shall secure the proper application of the said bonds according to the intent and meaning of the original ordinance, to which this is a supplement. Now, therefore—

SEC. 1. *Be it enacted and ordained by the mayor and city council of Baltimore*, That whenever the commissioners of finance of the city of Baltimore shall have concluded such arrangements with the Pittsburgh and Connellsville Railroad Company as shall provide for the application of the proceeds of the bonds hereby directed to
155 be issued in such manner as to said commissioners shall seem most conducive to the early completion of said road, and shall certify such facts to the register of the city, the said register shall be, and he is hereby, authorized to prepare and execute bonds in the usual form, with the signature of the mayor and the seal of the city thereto, in sums of five hundred and one thousand dollars, to amount of one million of dollars in the aggregate, the said bonds to be payable on the first day of January, 1886, bearing six per cent. interest per annum, payable semi-annually on the first day of January and July in each year, at some place to be therein designated, in the city of Baltimore; and upon the surrender to the said register, from time to time, for cancellation of any amount of the bonds of
156 the said Pittsburgh and Connellsville Railroad Company heretofore guaranteed by the city of Baltimore, to deliver a like amount of said bonds of the city of Baltimore to said commissioners of finance, to be by them sold as other bonds of said city are by them sold, and the proceeds to be disbursed by the said commissioners of finance in the discharge of the debts and contracts of said road upon the order of the president and directors of said road, when they, the said commissioners, shall be satisfied that said orders are given for the legitimate expenditure of said road, and for redeeming from hypothecation the bonds of the said company guaranteed by the city of Baltimore.

SEC. 2. *And be it enacted and ordained*, That before the said exchange shall take place to any extent whatever, the said
157 Pittsburgh and Connellsville Railroad Company shall execute

to the city of Baltimore a deed, the form of which shall be approved by the counsellor to the city, recognizing and confirming all the provisions and conditions of the original ordinance to which this is a supplement, except as modified by this ordinance, and covenanting for and securing the payment by the said railroad company of the interest and principal of said bonds as they shall, respectively, become payable, and making the mortgage now held by the city of Baltimore applicable to secure the interest and principal of the bonds of the city hereby directed to be issued.

SEC. 3. *And be it enacted and ordained*, That whenever the
158 said commissioners shall be satisfied that the said railroad company can borrow from other sources the whole sum necessary to complete and equip the whole line of said road from Cumberland to Pittsburgh, after the expenditure of the means now possessed, or which may hereafter be acquired by said company upon the security of a first mortgage upon the property of said company, and can arrange that the city of Baltimore, as second mortgage, shall have priority over all other claimants against the property of said company, except the first mortgage, the said commissioners shall certify the same to the mayor of the city of Baltimore, and then the said mayor shall be, and he is hereby, authorized to execute to the lenders of said money a deed giving priority to the mortgage
159 to the lenders of said money over the mortgage to the city of Baltimore.

SEC. 4. *And be it enacted and ordained*, That this ordinance shall not go into effect until it and the provisions and conditions thereof shall be accepted by the said Pittsburgh and Connellsville Railroad Company.

JOHN F. McJILTON,
President of the First Branch.
JAMES ARMITAGE,
President of the Second Branch.

Approved June 10, 1856.
[L. S] SAM'L HINKS, *Mayor.*

160 CITY REGISTER'S OFFICE, CITY HALL,
Baltimore, June 18th, 1856.

I hereby certify that the above is a correct copy of an ordinance of the mayor and city council of Baltimore on file in this office.
JOHN A. THOMPSON, *Register.*

161 C.

A further supplement to an ordinance entitled "An ordinance to guarantee the bonds of the Pittsburgh and Connellsville Railroad Company," approved June 24th, 1853.

Whereas the Pittsburgh and Connellsville Railroad Company are desirous of issuing bonds to the amount of four hundred thousand dollars, on which to obtain a loan for the construction of that part of

their road lying between their depot in Pittsburgh and Port Perry, and, in order to enable them to effect such loan, have applied to the mayor and city council of Baltimore to postpone the lien of their mortgage upon said part of the Pittsburgh and Connellsville
162 railroad, so as to enable the company to give priority and preference of payments to such persons as may become purchasers of said bonds by a pledge of said part of their road, freed from the city mortgages. Now, therefore—

SECTION 1. *Be it enacted and ordained by the mayor and city council of Baltimore*, That all liens and mortgages now held by the mayor and city council of Baltimore, or to which they are in any way entitled in and to that part of the Pittsburgh and Connellsville railroad which lies eastwardly from Pittsburgh, for the distance of about ten miles and six-tenths of a mile, between the depot of said company in Pittsburg and Port Perry, near Turtle creek, be, and the same are hereby, waived and postponed in favor of such persons as
163 shall become purchasers of bonds, to be issued by the Pittsburgh and Connellsville Railroad Company, to the amount of four hundred thousand dollars, and to whom, for the repayment thereof, said company shall pledge the said part of their road; provided, however, said bonds shall not be sold, disposed of, or hypothecated by the company, or any agent for the company, for less than seventy-five per cent. upon the amount of the bonds so purchased; and that the purchasers or holders of said bonds, to the extent of said part of the Pittsburgh and Connellsville railroad above described, shall have preference and priority of lien for the payment of said bonds over and above that of the mayor and city council, under their said mortgages, reserving, however, to the said mayor
164 and city council of Baltimore, in the fullest manner, all benefit whatever of their said mortgages and liens to all other portions of the road of said company except that above described; and also the lien of the said city of Baltimore upon the said portion of the road from Pittsburgh to Port Perry, after the payment of the bonds hereinbefore mentioned.

SECTION 2. *And be it enacted and ordained*, That the said Pittsburgh and Connellsville Railroad Company shall not establish a discrimination of tolls in any one portion of the road over another, unless with the assent and concurrence of the directors hereinafter mentioned; but the same shall be equalized and regulated by the rates adopted and in force upon the Pittsburgh and Connells-
165 ville road; and the said company shall charge to the new section of the road, (which is between Pittsburgh and Port Perry,) for the use therein of all motive power and rolling stock and salaries of officers and servants, its fair proportion of costs and expenses; neither shall the salaries or number of the officers, servants, or employees of the said Pittsburgh and Connellsville Railroad Company be increased, unless with the assent and concurrence of a majority of the directors appointed, who are residents of the city of Baltimore.

SECTION 3. *And be it enacted and ordained*, That the mayor of the city of Baltimore shall have the power to nominate the three directors

of said company, to be chosen from the city of Baltimore, (as
166 provided for by the original ordinance, No. 74, approved 24th June, 1853,) who shall be elected according to such nomination by the said Pittsburgh and Connellsville Railroad Company.

SECTION 4. *And be it enacted and ordained*, That no part of the revenue derived from any portion of the Pittsburgh and Connellsville railroad now completed, shall be applied in any way to the construction or management of the said road from Pittsburgh to Port Perry.

SECTION 5. *And be it enacted and ordained*, That the mayor and city council of Baltimore shall have the privilege of purchasing, at their option, the said road from Pittsburgh to Port Perry, upon the payment to the bondholders the amount of their bonds; or by sub-
167 stituting these for its own bonds, for the same amount and upon the same terms.

SECTION 6. *And be it enacted and ordained*, That the said road shall be completed so as to be open for business within the space of three years from the first day of July next, or that this ordinance, at the discretion of the mayor and city council of Baltimore, may be repealed; reserving, however, in full the rights of such persons as may have bona fide subscribed and paid for in cash, work, or materials for said road, any portion of the bonds authorized to be issued by this ordinance.

SECTION 7. *And be it enacted and ordained*, That this ordi-
168 nance shall have no effect until it shall be approved by the Pittsburgh and Connellsville Railroad Company, and notification of such approval, in due form, shall be transmitted to the mayor of the city of Baltimore, which shall be filed in the office of the city register.

SECTION 8. *And be it further enacted and ordained*, That the mayor of the city of Baltimore shall have full power to execute any deed that may be necessary to give effect and operation to the provisions of this ordinance.

(Signed) JOHN B. SEIDENSTRICKER,
President of the Second Branch.

(Signed) JNO. T. FORD,
President of the First Branch.

Approved April 21st, 1858.

(Signed) THOMAS SWANN, *Mayor.*

169 REGISTER'S OFFICE.
Baltimore, April 21, 1858.

I, John A. Thompson, register of the city of Baltimore, hereby certify that the above is a true and correct copy of the original ordinance now on file in my office.

[SEAL.] JNO. A. THOMPSON, *Register.*

170 *Copy of exemplification of a mortgage from P. & C. R. R. Co.*

This indenture, made the 4th day of August, in the year of our Lord one thousand eight hundred and fifty-six, between the Pittsburgh

and Connellsville Railroad Company, a corporation created by an act of the general assembly of the State of Pennsylvania, passed on the third day of April, in the year eighteen hundred and thirty-seven, and by an act of the general assembly of the State of Maryland, passed at January sessions, in the year eighteen hundred and fifty-three, of the first part, and Charles M. Keyser and Robert Clinton Wright, of the second part: Whereas, in pursuance of the provisions of an ordinance of the mayor and city council of Baltimore,
171 approved on the twenty-fourth day of June, eighteen hundred and fifty-three, the Pittsburgh and Connellsville Railroad Company aforesaid did, by indenture dated the twenty-ninth day of October, eighteen hundred and fifty-five, and duly recorded, convey, by way of mortgage, unto the said Keyser and Wright, the real and personal estate and property of said railroad company, to secure the payment of the bonds referred to in said ordinance, and to guarantee the performance by said railroad company of the duties imposed upon it by the terms of said ordinance, and said ordinance contained an agreement on the part of said city of Baltimore to indorse the bonds of said railroad company to the amount of one million of dollars,
172 for the pecuniary assistance of said railroad company; and whereas the said railroad company has represented to the mayor and city council of Baltimore aforesaid that the mode of pecuniary assistance provided by said ordinance is unavoidable, and has made application to the said city to change the form of said aid from a guarantee by the city of the said company's own bonds into the city of Baltimore's bonds, the latter to be issued in substitution for the former; and whereas, by a further ordinance of the mayor and city council of Baltimore aforesaid, approved on the tenth day of June, eighteen hundred and fifty-six, it is provided that whenever
173 the commissioners of finance of the city of Baltimore shall have concluded such arrangements with the said railroad company as shall provide for the application of the proceeds of the bonds by the ordinance now being recited, directed to be issued in such manner as to such commissioners shall seem most conducive to the early completion of said bond, and shall certify such fact to the register of the city, that the bonds of the city aforesaid shall be issued in sums of five hundred dollars and one thousand dollars, to the amount of one million of dollars, in the aggregate, payable on the first day of January, eighteen hundred and eighty-six, bearing six per cent. interest per annum, payable semi-annually on the first day of January and July, in the city of Baltimore, said interest to be deposited
174 with the city register ten days prior to the first day of January and July in each and every year, and that upon the surrender to said register from time to time for cancellation of any amount of the said railroad company's bonds, heretofore guaranteed by the city in pursuance of the ordinance first above recited, then a like amount of said bonds of the city of Baltimore shall be delivered to said commissioners of finance, to be by them sold, as other bonds of said city are by them sold, and the proceeds of such sales are to be disbursed by the said commissioners in discharge of the debts and

contracts of said road upon the order of the directors and president of said road, when said commissioners shall be satisfied that
175 said orders are given for the legitimate expenditure of said road, and for redeeming from hypothecation the bonds of said company guaranteed by said city; and whereas said ordinance further provides that said railroad company shall execute a deed recognizing and confirming all the provisions of the original ordinance, (first above recited,) except as modified by this ordinance now being recited, and covenanting for and securing the payment by said railroad company of the interest and principal of the said bonds of the city so to be issued in substitution for the aid originally intended to the said railroad company by the said city; and whereas said ordinance further provides that whenever the said commissioners shall be satisfied that the said railroad company have arranged to
176 borrow from other sources the whole sum necessary to complete and equip the whole line of said road from Cumberland to Pittsburgh, after the expenditure of the means now possessed, or which may hereafter be acquired by said company upon the security of a first mortgage upon the property of said company, and can arrange that the city of Baltimore, as a second mortgage, shall have priority over all other claimants against the property of said company, except such first mortgage, then the said city, upon certificate of said commissioners, shall execute such deed as shall be necessary to give priority over the mortgage to the city of Baltimore;
177 provided, however, that nothing herein contained shall in any manner be construed as requiring said company to clear their property from the liens and incumbrances now and heretofore at the date of said deed of mortgage of the twenty-ninth day of October, eighteen hundred and fifty-five, held thereon respectively by a certain Thomas Bakewell, esq., and Mrs. Sarah B. Fetterman, nor shall anything in this deed be deemed or taken to affect said liens; and whereas it is understood and agreed by and between the parties to this deed, and hereby declared to be their intent and meaning, that the said deed of mortgage of the twenty-ninth day of October, eighteen hundred and fifty-five, shall stand and continue in force with every
178 stipulations, rights and franchises, road or roads, tolls, and revenue of the Pittsburgh and Connellsville Railroad Company aforesaid, in trust as security for the performance and fulfilment of the covenants, stipulations, and conditions herein set forth or referred to; provided, nevertheless, that if the Pittsburgh and Connellsville Railroad Company aforesaid do and shall, will and truly, pay to the holder or holders of the aforesaid bonds so to be issued by the city of Baltimore aforesaid the amount thereof, with interest, without any fraud or further delay, and without any deduction, defalcation, or
179 abatement to be made of anything, for or in respect of any charges, taxes, or assessments whatsoever; and shall also well and truly perform and fulfil covenants, stipulations, and conditions herein set forth or referred to, then this indenture and the estate hereby granted shall cease, determine, and become void.

And the Pittsburgh and Connellsville Railroad Company aforesaid

doth hereby covenant with the mayor and city council of Baltimore well and truly to perform, observe, and fulfil all the matters and things herein set forth and referred to as on its part to be done, observed, and fulfilled, as fully in every respect as if the same were now specially repeated and set forth. And the Pittsburgh and Connellsville Railroad Company aforesaid hath directed Benjamin H. Latrobe, the president thereof, to acknowledge this indenture
180 as its provision and claim therein contained, except when it has been modified by or is inconsistent with any of the provisions of this present instrument.

And whereas it is agreed by and between the said railroad company and the said city that the said company, for the purpose of establishing a fund for the payment of the principal of said bonds to be issued by said city, shall pay to the register of said city or deposit to his order in the city of Baltimore the sum of six thousand dollars every six months, to be by him invested as a sinking fund in the stocks of the corporation of the city of Baltimore, until the purpose hereby intended shall be accomplished; and for the pur-
181 pose of securing the faithful performance on the part of said company of the matters and things herein recited these presents are executed.

Now this indenture witnesseth, that for and in consideration of the above recited promises, and for the sum of five dollars, by the parties of the second part hereto paid to the party of the first part to these presents at or before the sealing or delivery hereof, the receipt of which is hereby acknowledged, the Pittsburgh and Connellsville Railroad Company aforesaid hath granted, and by these presents doth grant, unto the said Charles M. Keyser and Robert Clinton Wright, parties designated by the register of the city of
182 Baltimore, the real and personal estate, attorney, that the same may be recorded according to law.

In testimony whereof the Pittsburgh and Connellsville Railroad Company aforesaid hath caused these presents to be sealed with its seal and to signed by its president on the day and year first above written.

BENJ'N H. LATROBE,
President of the Pittsburg and
Connellsville Railroad Company.

[SEAL.]

Signed, sealed, and delivered in the presence of—
JAMES T. ATKINSON.
A. L. RUSSELL.

STATE OF MARYLAND, *City of Baltimore, sct:*

Be it remembered, and it is bereby certified, that on the fourth day of August, in the year eighteen hundred and fifty-six,
183 before the subscriber, a commissioner appointed by the governor of the State Maryland, personally appeared Benjamin H. Latrobe, president of the Pittsburgh and Connellsville Railroad Company, whose name is signed to the writing above, bearing date on

the fourth day of August, A. D. 1856, and acknowledged the same before me, in the State aforesaid, to be the act and deed of the Pittsburg and Connellsville Railroad Company aforesaid.

Given under my hand and seal the day and year first aforesaid.

JAMES T. ATKINSON,
Commissioner of Pennsylvania.

STATE OF MARYLAND, *City of Baltimore, to wit:*

184 I hereby certify that on this fourth day of August, in the year eighteen hundred and fifty-six, before the subscriber, a justice of the peace of the State of Maryland for the nineteenth ward of the city of Baltimore aforesaid, personally appeared Benjamin H. Latrobe, and acknowledged the foregoing deed of mortgage to be the act of the Pittsburgh and Connellsville Railroad Company therein named; and also at the same time before me personally appeared Charles M. Keyser and Robert Clinton Wright, the mortgagees or trustees therein named, and made oath on the Holy Evangely of Almighty God that the consideration set forth in said mortgage is true and bona fide as therein set forth.

WM. H. HAYWARD.

185 STATE OF MARYLAND, *Baltimore City, sct:*

I hereby certify that William H. Hayward, esquire, before whom the annexed acknowledgment and affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof I hereto set my hand and affix the seal of the supreme court of Baltimore city, this the 4th day of August, A. D. 1856.

[SEAL.] E'W'D DOWLING,
Clerk of the Supreme Court of Baltimore City.

186 AUGUST 5TH, 1856.

Rece'd for record and same day was recorded in Liber H. R. No. 15, folios 48, 49, 50, and 51, one of the land records of the circuit court for Allegany county, State of Maryland.

In testimony whereof I hereunto subscribe my name and affix the seal of the said court the day and year aforesaid.

[SEAL.] HORACE BESLEY,
Clerk, Allegheny County, Md.

STATE OF PENNSYLVANIA, *County of Bedford, ss:*

Recorded in the office for recording of deeds, &c., in and for said county, in record book or mortgage book B, pages 255, 6, and 7, the 5th August, A. D. 1856.

In testimony whereof I have hereunto set my hand and
187 affixed the seal of said office, at Bedford, the same day and year.

[SEAL.] D. WASHABAUGH,
Recorder.

STATE OF PENNSYLVANIA, *Somerset County, ss:*

Recorded in the office for recording deeds, &c., in and for said county, in mortgage book, vol. 1, pages 242 and 243, the 7th day of August, 1856.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at Somerset, this 9th day of August, A. D. 1856.

[SEAL.] JACOB NEFF, *Recorder.*

188 STATE OF PENNSYLVANIA, *Westmoreland County, ss:*

Recorded in the office for recording deeds, &c., in and for said county, in mortgage book No. 1, page 461, 2, and 3.

Given under my hand and seal of office, at Greensburgh, this 8th day of August, A. D. 1856.

[SEAL.] JACOB M. MILLER, *Recorder.*

STATE OF PENNSYLVANIA, *Fayette County, ss:*

Recorded in the office for recording deeds, &c., in and for said county, in mortgage book, first pages 64, 65, and 67.

Given under my hand and seal of office, at Uniontown, this 10th day of August, A. D. 1856.

[SEAL.] JOHN COLLINS, *Recorder.*

189 STATE OF PENNSYLVANIA, *Allegheny County, ss:*

I, J. P. Ross, recorder of deeds, &c., in and for said county, do hereby certify that the above is a true and correct copy of a mortgage as found recorded in the recorder's office of said county, in mortgage book, vol. 31, page 1, 2, 3, 4, and 5.

Given under my hand and seal of said office, this fourteenth day of December, A. D. 1861.

[SEAL.] J. P. ROSS, *Recorder.*

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191 *Officers.*

President: Wm. Larimer, jr. Secretary: H. D. King. Treasurer: Wm. B. Curry. Directors: Wm. Larimer, jr., Dan'l R. Davidson, Henry Walter, Wm. B. Curry, Walter Bryant, C. Zug, E. D. Gazzam, A. M. Hill, Henry Blackston, H. D. King, A. W. Marks, B. F. Jones.

192 **AN ACT to incorporate the Pittsburgh and Connellsville Railroad Company.**

Commissioners.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same,* That W. W. Fetterman, William Bell, N. B. Craig, John Morrison, William G. Alexander, Benjamin Bakewell, James Ross, jr., Charles Shaler, Alexander Brackenridge, John Shoenberger, George Darsie, Wm.

Addison, Lewis Peterson, Jacob Forsyth, Thomas S. Clark, Sylvanus Lothrop, A. Galway, Wm. Holmes, George A. Cook, James S. Craft, William W. Irwin, John D. Baird, Benjamin Darlington, Chas. Avery, John M. Snowden, E. Henderson, William Wade, Christopher Magee, Isaac Lightner, O. O. Gregg, Hezekiah Nixon, S. P. Darlington, George Wallace, James Patterson, Hugh Duff, William A. Penneman, Samuel Frew, A. N. McDowell, Hugh Fergus, E. Percival, Garret Wall, Fauntley Muse, Matthew Henderson, Henry H. Peterson, William Ripley, Andrew Watson, of the county of Allegheny; John C. Plumer, Joseph Markle, Joseph Budd, Evan Findlay, Charles Fullwood, Samuel H. Montgomery, Jos. Smith, Archibald Boyd, David Bennet, Randel Johnston, Jas. Bell, Benjamin Stewart, John Nichols, Joseph Stokely, Jos. P. Weddle, Henry Fulton, of the county of Westmoreland; John Fuller, Jas. C. Cummings, Sam'l Marshall, Joseph Torrance, William L. Miller, Thomas G. Ewing, John Doogan, Thomas Foster, Daniel Rogers, Joseph Rogers, Alex'r Johnston, Samuel Evans, William Davidson, Henry Blackston, Herman Gebhart, William Espy, William Andrews, David B. Long, John M. Burny, Robert Smilie, Robert Bleakley, Robert Long, John W. Phillips, John P. Gibson, Jacob Weaver, James Paul, jr., David A. C. Shenard, Col. John Bute, John M. Austin, Nathaniel Ewing, Henry W. Beeson, Wm. B. Roberts, John Dawson, Joseph Paull, James Piper, Urich Springer, Isaac Wood, William Crawford, Andrew Stewart, James Fuller, Person Cope, Daniel Gallantine, Philip Lucas, Joseph H. Cunningham, Joseph Pennock, William Murphy, George M'Cray, Henry Smith, William Bryson, Thomas Rankin, of the county of Fayette; John Miller, Joseph Hershimer, Peter Buddy, Samuel Gorger, Michael Riter, Robert Evans, John Winpenny, Henry Leech, Jonathan Miller, Frederick Sorber, Benjamin Sage,
193 R. B. Knight, Charles Himman, Miles N. Carpenter, John Carns, Daniel Newman, N. Morselles, Detworth Wentz, Samuel J. Pearson, Benjamin E. Carpenter, Adam Stimmetz, John J. McCahen, John T. Smith, (tanner,) Hugh Clark, Edward D. Martin, Joseph R. Chandler, John Tierney, John H. Frick, Jacob R. Coats, George H. Hart, Benjamin Mifflin, Joseph C. Neal, William Hubbard, A. M. Peltz, of the county of Philadelphia, be, and they are hereby, appointed commissioners, to do and perform the several things hereinafter mentioned; that is to say, they, or any of them, shall procure a sufficient number of suitable books, and in each of them enter as follows: "We and each of us whose names are hereunto subscribed do promise to pay to the Pittsburgh and Connellsville Railroad Company the sum of one hundred dollars for every share of stock set opposite

To procure books.

Form of subscription.

Price of shares 100 dolls. each.

our respective names, and by us respectively subscribed, in such manner and proportions, and at such times and at such places as shall be determined and directed by the said directors, in pursuance of an act entitled "An act to incorporate the Pittsburgh and Connellsville Railroad Company." Witness our hands the day of , in the year of our Lord one thousand eight hundred and thirty- , and shall give at least twenty days previous public notice, in two of the papers printed in the city of Pittsburgh, and two in the counties of Westmoreland and Fayette, of the times when and the places where some one or more of the aforesaid commissioners will attend and receive subscriptions from all persons of lawful age, who shall offer to subscribe in said books, which shall be kept open for the purpose aforesaid at least six hours in every juridical day, for the space of three days, or until there shall be subscribed in the said books six thousand shares: *Provided*, if at the expiration of three days the books aforesaid shall not have the number of shares aforesaid therein subscribed, then the said commissioners, at their discretion, may adjourn from time to time and transfer the books elsewhere, until the whole number of shares aforesaid shall be subscribed, of which adjournment and transfer the commissioners aforesaid shall give such public notice as the occasion may seem to them to require; but no subscription shall be valid unless the person so subscribing shall pay to the said commissioners, at the time of making the same, the sum of five dollars on each share for the use of the company.

Notice.

Who may subscribe.

6,000 shares.

Proviso.

Five dollars to be paid at the time of subscribing.

SECTION 2. When two thousand shares or more shall be actually subscribed, and five dollars on each share paid to said commissioners, the said commissioners, or any ten of them, shall certify the same, under oath or affirmation, to the governor of this Commonwealth, and on receipt of such certificate the governor shall, by letters patent under his hand and the seal of the Commonwealth, create and erect the subscribers, and if the subscription be not full at the time, then those who shall thereafter subscribe to the whole number of shares aforesaid, into a body politic and corporate, in deed and in law, by the name, style, and title of "the Pittsburgh and Connellsville Railroad Company," and by the same name the subscribers shall have perpetual succession, and all privileges, franchises, and immunities incident to a corporation, may sue and be sued, implead and be impleaded, in all courts of record and elsewhere, may purchase, receive, have, hold, and enjoy, to them and their successsors and assigns, lands, tenements, and hereditaments, goods, chattels, and all estate, real, personal, and mixed, of what kind or quality soever, and the same, from time to time, to sell,

Letters patent.

Style and title.

Privileges and powers.

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mortgage, grant, alien, or dispose of, and make and have a common seal, and the same alter and renew at pleasure, and generally may do all and singular the matters and things which to them it shall lawfully appertain to do for the well being of the said corporation and the due management and ordering of the affairs and business of the same: *Provided*, That nothing herein contained shall be construed as giving to the said corporation any banking privileges, or any other liberties, privileges, or franchises, but such as may be necessary or incident to making and maintaining of the said railroad, and to the conveyance of passengers and the storage and transportation of goods, merchandise, and commodities thereon.

Seal.

Proviso

Prohibiting banking and other privileges.

Election of directors.

SECTION 3. That for the management of the affairs of the said corporation, twelve directors shall be elected, by ballot, annually, by the stockholders of the said company; the votes to be delivered in person or by proxy, duly authorized, which directors shall appoint one of their own number to be president, and shall respectively serve one year, or until other directors be elected, and shall have power to make such by-laws, rules, orders, and regulations, not inconsistent with the laws of the United States and of this Commonwealth, as may be necessary for the well ordering of the affairs of the said company: *Provided*, That none but stockholders shall be eligible to be elected directors, "and that at every such election, and in all cases in which the stockholders shall be called upon to vote, the number of votes to which each stockholder shall be entitled shall be according to the number of shares he or she may hold, in the following proportions: for each share not exceeding ten shares one vote, and for every five shares above ten and not exceeding thirty, two votes, and for every five shares above thirty and not exceeding fifty, one vote, but no share above fifty as aforesaid shall confer any additional right of voting;"* and also, that in all cases of election for directors, the twelve stockholders having the greatest number of votes shall be declared duly elected: *And provided also*, That no share or shares of stock shall be entitled to vote at any election, or at any general or special meeting of the said company, on which any instalments or arrearages may have been due or payable more than twenty days previously to the said election or meeting, and that all votes by proxy shall be upon such terms and conditions as are prescribed by the act passed the twenty-eighth day of March, in the year one thousand eight hundred and twenty, entitled "An act to regulate proxies:" *Provided*, That all proxies

Proviso.

Ratio of votes.

2d proviso.

3d proviso.

* The scale of voting was changed by the act of 1846, section 9, page 14.

shall be dated within sixty days of the election, at which time the same shall be presented.

Organization.

SECTION 4. The aforesaid commissioners, or any ten of them, shall, as soon as practicable after the said 195 letters patent shall have been obtained, give at least fifteen days previous public notice, in the newspapers hereinbefore mentioned, of the time and place by them appointed for the subscribers or stockholders to meet, for the purpose of electing twelve directors as provided for in the preceding sections, and that annually thereafter they shall meet on the first Monday of December, for the purpose of electing directors as aforesaid, upon a like previous notice, to be given by the directors for the time being, in such newspapers as they may deem advisable: *Provided*, That if from any cause such election shall not be held at the time specified therefor, the same may be held at any other time, on notice as aforesaid; that until such election be held, the directors of the preceding year shall continue to act, and that this charter shall not be avoided by reason of the irregularity or want of such election: *And provided also*, That in any case of vacancy, from death or resignation, of any director, his place shall be filled by the board or directors.

Annual elections.

Proviso.

2d proviso.

Meeting of the directors.

Quorum.

Secretary, treasurer, and other officers.

Security may be demanded.

Power to enforce payment of instalments, &c.

SECTION 5. The said directors shall meet at such times and places, and be convened in such manner as they shall hereafter agree upon; seven directors shall be a quorum for the transaction of business, who, in the absence of the president, may appoint a president pro tem.; the said directors shall appoint a secretary, treasurer, and such engineers and other officers as they may find necessary, shall fix their compensation, and may demand adequate security for the performance of their respective trusts; they shall have full power to ascertain and decide the time, manner, and proportions in which the stockholders shall pay the money due on their respective shares, and to forfeit to the use of said company the share or shares of every person failing to pay any instalment so required, or bring suit, for the recovery thereof, against the original subscribers of the stock or their assignees, which assignees shall be held liable as if original subscribers for any instalment which may be required to be paid after the date of their assignment, whether it be by indorsements of certificates or otherwise, to regulate tolls, to make such covenants, contracts, and agreements with any person, copartnership, or body politic whatsoever, as the execution and management of the works and the convenience and interests of the company may require, and in general to superintend and direct all receipts, disbursements, and other affairs and proceeding of the company: *Provided*, That if the said directors shall refuse to call in

Proviso.

any instalment remaining unpaid on said capital stock for one year after the funds paid in are exhausted, for the purpose of enabling them to satisfy debts due by the company, the said directors shall be personally responsible therefor.

Certificates.

SECTION 6. The directors first chosen as aforesaid shall issue a certificate to each stockholder for the number of shares he or she shall subscribe for or hold in said corporation, signed by the president, countersigned by the treasurer, and sealed with the common seal, subject, however, to all the payments due or to grow due thereon, which stock shall be transferable, in person or by attorney, executors, administrators, guardians, or trustees, under such regulations as may be provided by the by-laws.

Transfer.

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Statement of affairs.

SECTION 7. At each annual meeting of the stockholders the directors of the preceding year shall exhibit to them a complete statement of the affairs and proceedings of the company for such year, and that special meetings of the stockholders may be called by order of any three directors or by stockholders holding one-fourth in amount of the capital stock, on like notice as that required for annual meetings, specifying moreover the object of the meeting; but no business shall be transacted at such special meeting unless a majority of the stockholders shall attend in person or by proxy.

Special meetings.

Powers of the company.

SECTION 8. The said company be and they are hereby authorized, as soon as they can conveniently, to locate and construct a railroad of one or more tracks, from the city of Pittsburgh, by the course of the Monongahela and Youghiogheny rivers, to some suitable point at or near Connellsville, and to join and intersect at that point, or any other practicable point, any other improvement, either by canal or railroad, and to make, construct, and erect such warehouses, toll houses, carriages, cars, and all other works and appendages necessary for the convenience of the said company in the use of said railroad: *Provided*, That the said railroad shall not pass through or over any burial ground or the ground belonging to any place of public worship, intended for that purpose, or any dwelling house, without the consent of the owner thereof; and the said president, managers, and company shall, within six months after ascertaining the route of said railroad, cause an accurate survey of the lines of the said road to be made, a map or plot of which survey they shall cause to be filed in the secretary's office of this State, which map or plot, or a certified copy thereof, shall be sufficient evidence of the course of the said road, which may then be opened and all expenses incurred thereby shall be defrayed by the said company.

Proviso.

Map or plot survey.

Right of entry upon lands for materials.

SECTION 9. It shall be lawful for said president, directors, and company and their agents, and all persons employed by or under them, for the purpose contemplated by this act, to enter upon any land which they shall deem necessary for laying out said road, and also for the purpose of searching for stone, gravel, wood, or other materials for constructing said road; but no stone, sand, gravel, or wood shall be taken away from any land without the consent of the owner thereof, until the rate of compensation for the same be ascertained and paid, which rate of compensation, if the parties cannot agree thereon, shall be ascertained in the manner hereinafter mentioned as to the compensation for lands over which the said road may be laid.

Mode of ascertaining damages.

SECTION 10. That whenever it shall be necessary for the said president, directors, and company to enter in and upon, and occupy, for the purpose of making said railroad, any land upon which the same may be located, if the owner or owners of the said land shall refuse to permit such entry or occupation, and the parties cannot agree on the compensation to be made for any injury or supposed injury that may be done to said land by such entry and occupation, it shall and may be lawful for the parties to appoint six suitable and disinterested persons to estimate such damages, who shall be under oath or affirmation fairly and impartially to estimate the same, and shall reside within the proper county where the land lies, and the expenses incurred by the said appraisers shall be defrayed by the said railroad company; but if the parties cannot agree upon such persons, or if the persons so chosen shall not decide upon the matter, or if the owner of such land shall refuse or neglect to join in such appointment within ten days after the requisition for that purpose upon him, or if such owner shall be feme covert, under age, non compos mentis, out of the State, or unknown, then it shall be lawful for the court of common pleas of the county in which the land lies, on application of either party, and at the cost and charges of said corporation, to appoint six disinterested men of said county, to view, examine, and survey said lands, tenements, and hereditaments, and estimate the injury and damage, if any, that in their apprehension will be sustained as aforesaid by reason of said road, and report the same, under their oaths and affirmations, to the said court, which report being confirmed by the said court, judgment shall be entered thereon, and the viewers shall be entitled to the like fees for their services as are allowed by law to viewers of public roads and highways, to be paid by said company; and it shall be the duty of the said appraisers, in estimating such injury and damage, to take

Oath and duty of appraisers.

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Fees of viewers.

into consideration the advantages that will be derived to the owner or owners of the said land from the said railroad: *Provided*, That either party may appeal to the court within thirty days after such report may have been filed in the prothonotary's office of the proper county in the same manner as appeals are allowed by the provisions of the arbitration act of the year eighteen hundred and ten, and upon the coming in of such report and the confirmation thereof, or upon final judgment on appeal therefrom, and the said company paying to such owner the sum in such report or judgment specified, in full compensation for the use of said lands, or for the injury sustained as aforesaid, the said company, and they and all who act under them, shall be acquitted and freed from all responsibility for and on account of such injury: *Provided*, Upon the payment or tender of payment by the said company of the sum specified in the report of said viewers or appraisers to the owners of said lands, the said president and directors of said company, their agents or contractors for making or repairing said road, may immediately take and use the same, without awaiting the issue of proceedings as hereinbefore prescribed.

Proviso.

2d proviso.

SECTION 11. The said railroad shall be so constructed by the said company as not to obstruct the free use and passage of any public roads that may cross or enter the same, being laid out, or hereafter to be laid out; and in all places where the said railroad may cross or in any way interfere with any public road, it shall be the duty of the company to make, or cause to be made, a good and sufficient bridge, causeway or causeways, to enable all persons passing or travelling such public road to cross or pass over or under said railway, which bridge, causeway or causeways shall be made and maintained by the said company; and if the said company shall refuse or neglect to make such bridge, causeway or causeways, or when made to keep the same in good repair, they shall be liable to pay a penalty of ten dollars for every day the same shall be neglected or refused to be made or repaired, to be recovered by the supervisors of the township or the officers of any incorporated company as debts of like amount are by law recoverable, and shall, moreover, be liable to an action or actions at the suit of any person who may be aggrieved thereby, and the service of process upon any officer of said company shall be as good and available in law as if served upon the president thereof: *Provided*, That no obstruction whatever shall be placed on or across any stream now declared a public highway so as to impede or interfere with the full and free navigation thereof, or to change the direction of any stream or water course not declared

Use of public roads shall not be obstructed.

Public causeways.

Penalty for neglect.

Proviso.

a public highway so as to affect the rights and interests of the owners thereof, without the consent of said owners, unless the right to the same be obtained by such process as is before directed in relation to other private property, and that any inconvenience or expense attending the alteration of vessels navigating said stream, to conform to the bridges erected by said company, shall be paid out of the funds of the company.

Private causeways.

SECTION 12. For the accommodation of all persons owning or possessing land through which the said railroad may or shall pass, and to prevent inconvenience to such persons in crossing and passing the same, it shall be the duty of said company, when required, to make, or cause to be made, a good and sufficient bridge, causeway or causeways wherever the same may be necessary to enable the occupant or occupants of said lands to cross or pass over or under the same with wagons, carts, and implements of husbandry as occasion may require: *Provided*, That the said company shall in no case be required to make or cause to be made more than one such bridge or causeway through each plantation or lot of land, for the accommodation of any one person owning or possessing land through which said railroad may or shall pass, and the said causeway or causeways, when so made, shall be maintained and kept in repair by the said company; and if the said company shall refuse or neglect to make such causeway or causeways, or when made to keep the same in good repair, the said company shall be liable to pay any person aggrieved thereby all the damages sustained by such person in consequence of such refusal or neglect, to be sued for and recovered before any magistrate or any court having cognizance thereof; and the service of process upon any officer of said company shall be as good and available in law as if served upon the president thereof: *Provided*, That this act shall not be so construed as to prevent owners of land through whose property the said railroad may pass from constructing a bridge, causeway, or crossing-place over or under said railroad, in conformity with such as are usually made by said company.

Proviso.

Penalty for neglect.

2d proviso.

Rules and regulat'ns for transportation, &c.

SECTION 13. On the completion of the said railroad or any portion thereof not less than ten miles, the same shall be esteemed a public highway for the conveyance of passengers and the transportation of merchandise and commodities, under such regulations as shall be prescribed by the directors; and it shall and may be lawful for the said company to demand and receive such sum or sums of money for tolls, of persons and property, as they shall think, from time to time, reasonable: *Provided*, The toll on any species of property shall not exceed five cents per ton per mile, nor upon passengers not more than three cents each per mile; and it shall be

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Proviso.

Tolls.

further lawful for the president and directors of said company to prescribe the kind of carriages, wagons, and conveyances which shall be used on said railroad for the transportation of persons and commodities, and to adopt such regulations as to the transit of wagons and carriages on the said road as may seem to them most conducive to the interests of the public and of persons using the same, and the legislature reserves the right to reduce and regulate the tolls.* May be reduced.

SECTION 14. The president and directors shall have full power to purchase with the funds of the said company, and place on the said railroad, all machines, vehicles, carriages, and teams of any kind whatsoever, which they may deem proper and necessary for the purposes of transportation, and that they may also, to any extent which they may deem advisable, transport all goods, wares, minerals, and merchandise, or other articles that may be offered them for transportation, and all passengers wishing to be conveyed on their railroad, and the said president and directors may charge for toll and freight on all articles and for passengers so conveyed by them, their officers and agents, not exceeding twice the rates granted in the preceding section of this act for tolls alone: *Provided*, That if the said machines, wagons, vehicles, carriages, and teams shall be so used on the said railroad as to prevent or render unsafe the travelling upon any canal or public road now constructed or laid out, on or near the line of the said railroad, the legislature may order and direct such rules and regulations for the said machines, wagons, vehicles, carriages, and teams as will secure such travelling safe and uninterrupted; and if such travelling shall be unsafe or interrupted, the court of quarter sessions of the respective counties through which the said railroad shall pass may order and direct such rules and regulations until the legislature shall have acted thereupon.

Machines, wagons, carriages, and teams for transportation.

Tolls and freight.

Proviso.

SECTION 15. Dividends of so much of the profits of the institution as shall appear advisable to the directors shall be declared at least twice in every year and paid to the stockholders on demand, at any time after the expiration of ten days therefrom, but they shall in no case exceed the amount of the net profits actually acquired by the company, so that the capital stock shall never thereby be impaired; if the said directors make any dividend which shall impair the capital stock of said institution, the directors consenting thereto shall be liable in their individual capacities to said company for the amount of stock so divided, and each director present when such dividend is

Dividends.

Liability of directors.

* Proviso repealed by act of 1846, sec. 9, page 13.

made shall be adjudged to be consenting thereto, unless he forthwith enter his protest on the minutes of the board and give public notice to the stockholders at the declaring of such dividend.

SECTION 16. If it shall appear to the said company that the amount of capital authorized by this act is insufficient to complete the said railroad and to accomplish the several objects of this charter, it shall be lawful for the stockholders assembled at any annual or special meeting to increase the said capital to the necessary amount, by increasing the number of shares and directing an additional subscription: *Provided*, That the said capital shall in no case be increased so as to exceed one million of dollars.*

Capital may be increased.

Proviso.

SECTION 17. If the said company shall not commence the construction of the said railroad within the term of five years from the passing of this act, or if after the completion of the said railroad the said corporation shall suffer the same to go to decay and be impassable for the term of two years, then this charter shall become null and void, except so far as compels said company to make reparation for damages.

Time of commencing work, etc.

SECTION 18. The said company shall not prevent any person or persons being owner or owners of lands bordering on said railroad or adjacent thereto from making such lateral roads, and to connect them with said railroad, from their said lands, as the said person or persons may conceive necessary, but so as not to interfere with or impede the use thereof.

Lateral roads to connect.

SECTION 19. At the end of the third year after the charter shall be obtained, and at the end of each year thereafter, there shall be furnished to the legislature an abstract of the accounts of the company, showing the amount of the capital paid in and the debts of the said company, the amount received for tolls and transportations, the rates charged on the amount of dividends declared, which abstract shall be verified by the oath or affirmation of the president or treasurer of said company, and the said company shall pay annually into the treasury of the Commonwealth a tax of eight per cent. on all dividends which may exceed six per cent. per annum on the capital stock actually paid in.

Statement of accounts, etc., to be made to the legislature.

Tax on dividends.

SECTION 20. If the said company shall at any time misuse or abuse any of the privileges herein granted, the legislature may resume, all and singular, the rights and privileges hereby granted to the said corporation; the legislature also reserves the right to purchase the rights of said company and the railroad, with its appurtenances,

Legislature may resume the rights and privileges.

* Proviso repealed by act of 1846, sec. 9, p. 13.

at any time after thirty years from the passage of this act, paying to said company a sum of money, which, together with the tolls received, shall be equal to the cost and expenses of said railroad, with an interest of eight per cent. per annum thereon. May purchase the road, etc.

LEWIS DEWART,
Speaker of the House of Representatives.
J. R. BURDEN,
Speaker of the Senate.

Approved the third day of April, anno Domini one thousand eight hundred and thirty-seven.

JOS. RITNER.

201 AN ACT for the relief of the overseers of the poor of the borough of Erie, and for other purposes.

SECTION 5. That the "Act to incorporate the Pittsburgh and Connellsville Railroad Company," passed on the third day of April, one thousand eight hundred and thirty-seven, be revived extended, and continued in force, upon the same terms, conditions, and limitations, from and after the passage of this act, as were contained in the original act, from and after the date of its passage: *Provided, however*, That the shares of stock be reduced from one hundred dollars to fifty dollars, and that the amount to be paid on each share at the time of subscribing be reduced from five dollars to two dollars and fifty cents: *And provided also*, That the commissioners named in the original act, or the survivors of them, have the same authority and power to act, and upon the same conditions and under the same limitations as those commissioners had under the original act. Approved April 18, A. D. 1843.

SECTION 6. That the counties of Allegheny, Westmoreland, Fayette, and Somerset, and any city, borough, or incorporated company, shall have authority to subscribe thereto as fully as any individual could do, and shall be represented at elections and in other acts of said company by agents duly appointed by the commissioners of the respective counties, or by the mayors, chief officers, and the presidents of said cities, boroughs, and incorporated companies, all which subscriptions may be required in instalments as the company may think proper: *Provided*, That no more than one-third of the money subscribed shall be require in any one year.

SECTION 7. That said company shall have full power and discretion to select any route from the city of Pittsburgh to Turtle creek which may be deemed most eligible and advantageous, *and may extend said railroad beyond*

*Connellsville to Smithfield, or any other point on the waters of the Youghiogheny and within the limits of this Commonwealth.**

RESOLUTION legalizing the election of a justice of the peace in the borough of Dillsburg, in the county of York, and for other purposes.

Approved April 19, A. D. 1843.

Resolved, That so much of the seventh section of the act passed April, one thousand eight hundred and forty-three, entitled "An act for the relief of the poor in the borough of Erie, and for other purposes," as authorizes the Pittsburgh and Connellsville Railroad Company to extend their railroad beyond Connellsville, be, and the same is hereby, repealed.

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AN ACT to authorize the court of quarter sessions of Allegheny county to vacate Delaware lane, in said county, and for other purposes.

Approved April A. D. 1846.

SECTION 6. That the seventh resolution of the resolution entitled "A resolution legalizing the election of a justice of the peace in the borough of Dillsburg, in the county of York, and for other purposes," approved the nineteenth day of April, one thousand eight hundred and forty-three, be, and the same is hereby, repealed; and that the seventh section of the original act, entitled "Act for the relief of the overseers of the poor of the borough of Erie, and for other purposes," passed the eighteenth day of April, one thousand eight hundred and forty-three, be, and the same is hereby, continued in full force.

AN ACT authorizing the laying out of a State road from the borough of Orwigsburg, Schuylkill county, to intersect a public road leading from Easton to Mauch Chunk, and for other purposes.

Approved April 10, A. D. 1846.

SECTION 9. That the rates of toll authorized to be charged by the thirteenth section of "An act to incorporate the Pittsburgh and Connellsville Railroad Company," approved April the third, one thousand eight hundred and thirty-seven, shall not exceed two and a half cents per mile for each passenger, four cents per mile for each ton of two thousand pounds for freight, three cents per mile for each passenger car, and two cents per mile for each burden or freight car, every four wheels being computed as a car; and at all general meetings or elections by the stockholders of said company, each share of stock shall entitle the holder or holders thereof to one vote, and each ballot shall have indorsed thereon the number of shares thereby represented; and the provisos to the thirteenth and sixteenth sections of said act be, and the same are hereby, repealed.

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*The part in italics was repealed by resolution of April 19, 1843, and revived by act 1846.—See sec. 6, pag. 13.

203 AN ACT to authorise the commissioners of Lycoming county to borrow money, and for other purposes.

Approved April 17, A. D. 1846.

SECTION 8. That William Robinson, jr., Harmar Denny, Thomas Bakewell, Jesse Carothers, Joshua Hanna, James Kelly, William Wilkins, Z. H. Coston, F. G. Bailey, John B. Butler, Richard Biddle, Jas. Crossan, Walter Forward, and Jacob Painter be, and they are hereby, appointed commissioners, in addition to the commissioners named in the "Act to incorporate the Pittsburgh and Connellsville Railroad Company," with the same powers and duties which are conferred by said act.

Letters patent.

PENNSYLVANIA, *ss:*

In the name and by the authority of the Commonwealth of Pennsylvania, Francis R. Shunk, governor of the said Commonwealth, to all to whom these presents shall come, sends greeting:

Whereas, by an act of the general assembly of this Commonwealth, approved the third day of April, one thousand eight hundred and thirty-seven, entitled "An act to incorporate the Pittsburgh and Connellsville Railroad Company," and the several supplements thereto, the first approved the eighteenth day of April, A. D. 1843, embraced in an act entitled "An act for the relief of the overseers of the poor in the borough of Erie, and for other purposes," which last was in part repealed by a resolution approved the nineteenth day of April, A. D. 1843, embraced in a resolution entitled "Resolution legalizing the election of a justice of the peace in the borough of Dillsburg, in the county of York, and for other purposes," and which last resolution was repealed by the sixth section of an act approved the third day of April, A. D. 1846, embraced in an act entitled "An act to authorize the court of quarter sessions of Allegheny county to vacate Delaware lane, in said county, and for other purposes," and further by an additional supplement embraced in an act approved the tenth *tenth* day of April, A. D. 1846, entitled "An act authorizing the laying out of a State road from the borough of Orwigsburgh, Schuylkill county, to intersect a public road leading from Easton to Mauch Chunk, and for other purposes," and further by an additional supplement, approved
204 the seventeenth day of April, 1846, embraced in an act entitled "An act to authorize the commissioners of Lycoming county to borrow money, and for other purposes," it is, amongst other things, provided and enacted, that when two thousand shares or more shall be actually subscribed, and two dollars and a half paid on each share to the commissioners, the said commissioners, or any ten of them, shall certify the same under oath or affirmation to the governor of this Commonwealth, and on receipt of such certificate the governor shall, by letters patent under his hand and the seal of the Commonwealth, create and erect the subscribers, and if the

subscription be not full at the time, then those also who shall thereafter subscribe to the whole number of shares aforesaid, into a body politic and corporate, in deed and in law, by the name, style, and title of the "Pittsburgh and Connellsville Railroad Company." And whereas Thomas Bakewell, Lewis Peterson, George Darsie, Thomas S. Clarke, Joseph Pennock, Jesse Carothers, James Kelly, James Crossan, Wm. Robinson, jr., and John B. Butler, ten of the commissioners named in the said act of the general assembly and the supplements thereto, have certified to me under oath that the following named persons have subscribed two thousand and more shares of the capital stock of the said company and actually paid two dollars and fifty cents on each share at the time of subscribing, viz: James Wood, Lyon, Shorb & Co., and others.

Now know ye, that by virtue and in pursuance of the power and authority to me given in and by the first recited act of assembly and the several supplements thereto, I, the said Francis R. Shunk, governor of the Commonwealth, create and erect the said subscribers and also all those who shall hereafter subscribe to the number of shares authorized by the said acts of assembly and the supplements thereto, into a body corporate and politic, in deed and in law, by the name, style, and title of the Pittsburgh and Connellsville Railroad Company, and by the same name the subscribers shall have perpetual succession and all the privileges, franchises, and immunities incident to a corporation and may sue and be sued, implead and be impleaded, in all courts of record and elsewhere, may purchase, receive, have, hold, and enjoy to them and their successors and assigns, lands, tenements, and hereditaments, goods, chattels, and all estate, real, personal, or mixed, of what kind or quality soever, and the same from time to time to sell, mortgage, grant, alien, or dispose of, and make dividends of such portions of the profits as they may deem proper, and also may make and have a common seal and the same alter and renew at pleasure, and generally may do all and singular the matters and things which to them it shall lawfully appertain to do for the well being of the said corporation and the due management and ordering of the affairs and business of the same, and generally to have, possess, and enjoy all the powers, authority, rights, and privileges granted and authorized by the act of assembly first before recited and the several supplements thereto, incorporating said company, and subject to all the duties, requisitions, provisos, and restrictions specified and *and* enjoined by the same and other laws of this Commonwealth.

Given under my hand and the great seal of the State, at Harrisburg, this eleventh day of June, in the year of our Lord one thousand eight hundred and forty-six, and of the Commonwealth the seventieth.

By the governor.

[L. S.]

J. MILLER,
Secretary of the Commonwealth.

205 *Rules for the transaction of business at the board.*

The proceedings of the board of directors, when conducting their business as a deliberative body, shall be governed by the following rules:

1. When the president takes the chair the members shall take their seats. He shall be the judge of and preserve order according to the rules generally observed in deliberative bodies and those hereinafter prescribed. His decisions shall be immediately submitted to, unless two members require an appeal to the board.

2. The board being to order, the minutes of the preceding meeting shall be read before the board proceeds to any other business; and no debate shall be admitted, nor question taken, at such reading, except as to errors and inaccuracies. The ordinary and regular business of the board, including such subjects as the president may deem it his duty to bring forward, shall then be proceeded with in the order in which the president may think proper; after which the reports of committees shall be in order, and these being disposed of such other business may be taken up as may be offered by any member of the board.

3. Every member presenting a paper to the chair, shall first state its general purport; and every member who shall make a motion, or offer a resolution, or make an observation on any subject under discussion or consideration, shall rise and address the president; and conversation between two or more members on any subject while it is under discussion or consideration shall not be permitted.

4. No debate shall be entered into on any motion or resolution until it shall be stated from the chair; and all motions shall, if requested by the president or by two members, be reduced to writing: and no member shall speak more than twice upon any one question without leave from the board.

206 5. While a resolution is under consideration no motion shall be made, except to amend, divide, commit, or postpone; but it shall be in order, at any time, on the call of three members, to take the previous question, or question on the consideration, which shall be, "Will the board at this time act on this subject?" and if it shall be decided in the affirmative the debate may be continued. A motion to adjourn shall always be in order, but shall be decided without debate.

6. A member may call for the division of a question or resolution, where the sense will admit of it; but no amendment which tends to destroy the general sense of the clause of a resolution shall be admitted.

7. If business of different kinds shall be called for at the same time by different members, the board will judge and give preference accordingly.

8. The yeas and nays shall be taken on any question if called for by a member previous to the decision of such question; and when so taken the names of the directors shall be called in alphabetical order, but no motion for reconsideration shall be permitted unless made and

seconded by members who were in the majority on the original question.

9. The names of the members who make and second a motion shall be entered on the minutes.

10. No member shall depart without leave before the adjournment of the board.

11. The president may enter into debate and may vote on every question except an appeal from his decision.

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208 *Officers and directors of the Pittsburgh and Connellsville Railroad Co.*, 1855.

President and chief engineer: Oliver W. Barnes. Secretary: Alexander L. Russell. Treasurer: Hon. Samuel Jones. Directors: Oliver W. Barnes, city of Pittsburgh; Thomas Scott, city of Pittsburgh; Thomas Bakewell, city of Pittsburgh; Walter Bryant, city of Pittsburgh; James T. Kincaid, city of Pittsburgh; John Anderson, city of Pittsburgh; Samuel A. Long, city of Pittsburgh; Alex. L. Russell, city of Pittsburgh; Columbus O'Donnell, city of Baltimore; Daniel R. Davidson, Fayette county; Cyrus P. Markle, Westmoreland county; Peter Meyers, Somerset county.

209 APPENDIX.

AN ACT to incorporate the Pittsburgh and Connellsville Railroad Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by authority of the same*, That (names of commissioners omitted,) be, and they are hereby, appointed commissioners to do and perform the several things hereinafter mentioned; that is to say, they, or any of them, shall procure a sufficient number of suitable books, and in each of them enter as follows: "We, and each of us whose names are hereunto subscribed, do promise to pay to the Pittsburgh and Connellsville Railroad Company the sum of one hundred dollars* for every share of stock set opposite our respective names, and by us respectively subscribed, in such manner and proportions, and at such times, and at such places, as shall be determined and directed by the said directors, in pursuance of an act entitled 'An act to incorporate the Pittsburgh and Connellsville Railroad Company.' Witness our hands, the day of , in the year of our Lord one thousand eight hundred and thirty- ," and shall give at least twenty days previous public notice, in two of the papers printed in the city of Pittsburgh, and two in the counties of Westmoreland and Fayette, of the times when, and the places where, some one or more

To procure books.

Form of subscription.

Price of shares 100 dollars each.

Notice.

* Shares reduced to $50.—See act of April 18, 1843, page 12.

of the aforesaid commissioners will attend and receive subscriptions from all persons of lawful age who shall offer to subscribe in said books, which shall be kept open for the purpose aforesaid at least six hours in every juridical day for the space of three days, or until there shall be subscribed in the said books six thousand shares: *Provided*, If at the expiration of three days the books aforesaid shall not have the number of shares aforesaid therein subscribed, then the said commissioners, at their discretion, may adjourn from time to time and transfer the books elsewhere until the whole number of shares aforesaid shall be subscribed, of which adjournment and transfer the commissioners aforesaid shall give such public notice as the occasion may seem to them to require; but no subscription shall be valid unless the person so subscribing shall pay to the said commissioners at the time of making the same, the sum of five dollars* on each share for the use of the company.

Who may subscribe.

6,000 shares. Proviso.

Five dollars to be paid at the time of subscribing.

SECTION 2. When two thousand shares or more shall be actually subscribed, and five dollars on each share paid to said commissioners, the said commissioners, or any ten of them, shall certify the same under oath or affirmation to the governor of this Commonwealth, and on receipt of such certificate, the governor shall, by letters patent, under his hand and the seal of the Commonwealth, create and erect the subscribers, and if the subscription be not full at the time, then those who shall thereafter subscribe to the whole number of shares aforesaid, into a body politic and corporate, in deed and in law, by the name, style, and title of "The Pittsburgh and Connellsville Railroad Company," and by the same name the subscribers shall have perpetual succession and all privileges, franchises, and immunities incident to a corporation, may sue and be sued, implead and be impleaded in all courts of record and elsewhere, may purchase, receive, have, hold, and enjoy, to them and their successors and assigns, lands, tenements, and hereditaments, goods, chattels, and all estate, real, personal, and mixed, of what kind or quality soever, and the same from time to time to sell, mortgage, grant, alien, or dispose of, and make and have a common seal, and the same alter and renew at pleasure, and generally may do all and singular the matters and things which to them it shall lawfully appertain to do for the well being of the said corporation and the due management and ordering of the affairs and business of the same: *Provided*, That nothing herein contained shall be construed as giving to the said corporation any banking privileges, or any other liberties,

Letters patent.

Style and title.

Privileges and powers.

Seal.

Proviso.

Prohibiting banking and other privileges.

*The amount to be paid in cash at the time of subscribing reduced to two dollars and fifty cents.—See act of 18th of April, 1843, page 12.

privileges, or franchises but such as may be necessary or incident to making and maintaining of the said railroad, and to the conveyance of passengers and the storage and transportation of goods, merchandise, and commodities thereon.

SECTION 3. That for the management of the affairs of the said corporation twelve directors shall be elected by ballot, annually, by the stockholders of the said company; the votes to be delivered in person or by proxy, duly authorized, which directors shall appoint one of their own number to be president, and shall, respectively, serve one year, or until other directors be elected, and shall have power to make such by-laws, rules, orders, and regulations, not inconsistent with the laws of the United States and of this Commonwealth, as may be necessary for the well ordering of the affairs of the said company: *Provided*, That none but stockholders shall be eligible to be elected directors, "and that at every such election, and in all cases in which the stockholders shall be called upon to vote, the number of votes to which each stockholder shall be entitled shall be according to the number of shares he or she may hold in the following proportions: For each share not exceeding ten shares, one vote; and for every five shares above ten and not exceeding thirty, two votes; and for every five shares above thirty and not exceeding fifty, one vote; but no share above fifty, as aforesaid, shall confer any additional right of voting;"* and, also, that in all cases of election for directors, the twelve stockholders having the greatest number of votes shall be declared duly elected: *And provided, also*, That no share or shares of stock shall be entitled to vote at any election, or at any general or special meeting of the said company on which any instalments or arrearages may have been due or payable more than twenty days previously to the said election or meeting, and that all votes by proxy shall be upon such terms and conditions as are prescribed by the act passed the twenty-eighth day of March, in the year one thousand eight hundred and twenty, entitled "An act to regulate proxies:" *Provided*, That all proxies shall be dated within sixty days of the election, at which time the same shall be presented.

Election of directors.

Proviso.

Ratio of votes.

2d proviso.

3d proviso.

Organization.

212 SECTION 4. The aforesaid commissioners, or any ten of them, shall, as soon as practicable after the said letters patent shall have been obtained, give at least fifteen days previous public notice in the newspapers hereinbefore mentioned of the time and place by them appointed for the subscribers or stockholders to meet, for

* The scale of voting changed by act of 10th of April, 1846, section 9, page 13.

the purpose of electing twelve directors as provided for in the preceding sections, and that annually thereafter they shall meet on the first Monday of December, for the purpose of electing directors as aforesaid, upon a like previous notice to be given by the directors for the time being in such newspapers as they may deem advisable: *Provided*, That if from any cause such election shall not be held at the time specified therefor, the same may be held at any other time, on notice as aforesaid; that until such election be held, the directors of the preceding year shall continue to act, and that this charter shall not be avoided by reason of the irregularity or want of such election: *And provided, also*, That in any case of vacancy, from death or resignation of any director, his place shall be filled by the board of directors.

Annual election.

Proviso.

2d proviso.

SECTION 5. The said directors shall meet at such times and places, and be convened in such manner, as they shall hereafter agree upon. Seven directors shall be a quorum for the transaction of business, who, in the absence of the president, may appoint a president pro tem.; the said directors shall appoint a secretary, treasurer, and such engineers and other officers as they may find necessary; shall fix their compensation, and may demand adequate security for the performance of their respective trusts; they shall have full power to ascertain and decide the time, manner, and proportions in which the stockholders shall pay the money due on their respective shares, and to forfeit to the use of said company the share or shares of every person failing to pay any instalment so required, or bring suit for the recovery thereof against the original subscribers of the stock or their assignees, which assignees shall be held liable as if original subscribers for any instalment which may be required to be paid after the date of their assignment, whether it be by indorsements of certificates or otherwise; to regulate tolls, to make such covenants, contracts, and agreements with any person, copartnership, or body politic whatsoever, as the execution and management of the works and the convenience and interests of the company may require, and in general to superintend and direct all receipts, disbursements, and other affairs and proceedings of the company: *Provided*, That if the said directors shall refuse to call in any instalment remaining unpaid on said capital stock for one year after the funds paid in are exhausted, for the purpose of enabling them to satisfy debts due by the company, the said directors shall be personally responsible therefor.

Meeting of the directors.

Quorum.

Secretary, treasurer, and other officers.

Security may be demanded.

Power to enforce payment of instalments, &c.

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Proviso.

SECTION 6. The directors first chosen, as aforesaid, shall issue a certificate to each stockholder for the number of shares he or they shall subscribe for or hold in said cor-

Certificates.

poration, signed by the president, countersigned by the treasurer, and sealed with the common seal, subject, however, to all the payments due or to grow due thereon, which stock shall be transferable, in person or by attorney, executors, administrators, guardians, or trustees, under such regulations as may be provided by the by-laws.

Transfer.

SECTION 7. At each annual meeting of the stockholders the directors of the preceding year shall exhibit to them a complete statement of the affairs and proceedings of the company for such year, and that special meetings of the stockholders may be called by order of any three directors, or by stockholders holding one-fourth in amount of the capital stock, on like notice as that required for annual meetings, specifying, moreover, the object of the meeting; but no business shall be transacted at such special meeting unless a majority of the stockholders shall attend in person or by proxy.

Statement of affairs.

Special meetings.

SECTION 8. The said company be, and they are hereby, authorized, as soon as they can conveniently, to locate and construct a railroad of one or more tracks from the city of Pittsburgh, by the course of the Monongahela and Youghiogheny rivers, to some suitable point at or near Connellsville,* and to join and intersect at that point or any other practicable point, any other improvement, either by canal or railroad, and to make, construct, and erect such warehouses, toll houses, carriages, cars, and all other works and appendages necessary for the convenience of the said company in the use of the said railroad: *Provided*, That the said railroad shall not pass through or over any burial ground, or the ground belonging to any place of public worship intended for that purpose, or any dwellinghouse, without the consent of the owner thereof; and the said president, managers, and company shall, within six months after ascertaining the rute of said railroad, cause an accurate survey of the line of the said road to be made, a map or plot of which survey they shall cause to be filed in the secretary's office of this State, which map or plot, or a certificate copy thereof shall be sufficient evidence of the course of the said road, which may then be opened, and all expenses incurred thereby shall be defrayed by the said company.

Powers of the company.

Proviso.

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Map or plot survey.

Right of entry upon lands for materials.

SECTION 9. It shall be lawful for said president, directors, and company, and their agents, and all persons employed by or under them, for the purpose contemplated by this act, to enter upon any land which they shall deem necessary for laying out said road, and also for the pur-

* Extended to any point in Somerset or Bedford counties, by act 18th April, 1853.—See page 17.

pose of searching for stone, gravel, wood, or other materials for constructing said road; but no stone, sand, gravel, or wood shall be taken away from any land without the consent of the owner thereof until the rate of compensation for the same be ascertained and paid, which rate of compensation, if the parties cannot agree thereon, shall be ascertained in the manner hereinafter mentioned as to the compensation for lands over which the said road may be laid.

SECTION 10. Relative to the assessment of damages, &c. [Repealed and supplied by act of 21st of March, 1855. See page 21.]

Use of public roads shall not be obstructed.

SECTION 11. The said railroad shall be so constructed by the said company as not to obstruct the free use and passage of any public roads that may cross or enter the same, being laid out, or hereafter to be laid out; and in all places where the said railroad may cross or in any way interfere with any public road, it shall be the duty of the company to make or cause to be made a good and sufficient bridge, causeway or causeways, to enable all persons passing or travelling such public road to cross or pass over or under said railway, which bridge, causeway or causeways shall be made and maintained by the said company; and if the said company shall refuse or neglect to make such bridge, causeway or causeways, or when made to keep the same in good repair, they shall be liable to pay a penalty of ten dollars for every day the same shall be neglected or refused to be made or repaired, to be recovered by the supervisors of the township, or the officers of any incorporated company as debts of like amount are by law recoverable, and shall, moreover, be liable to an action or actions at the suit of any persons who may be aggrieved thereby, and the service of process upon any officer of said company shall be as good and available in law as if served upon the president thereof: *Provided*, That no obstruction whatever shall be placed on or across any stream now declared a public highway so as to impede or interfere with the full and free navigation thereof, or to change the direction of any stream or water course not declared a public highway so as to affect the rights and interests of owners thereof without the consent of said owners, unless the right to the same be obtained by such process as is before directed in relation to other private property, and that any inconvenience or expense attending the alteration of vessels navigating said stream, to conform to the bridges erected by said company, shall be paid out of the funds of the company.

Public causeways.

Penalty for neglect.

Proviso.

SECTION 12. For the accommodation of all persons owning or possessing land through which the said rail-

Private causeways.

road may or shall pass, and to prevent inconvenience to such persons in crossing and passing the same, it shall be the duty of said company, when required, to make, or cause to be made, a good and sufficient bridge, causeway or causeways, wherever the same may be necessary, to enable the occupant or occupants of said lands to cross or pass over or under the same with wagons, carts, and implements of husbandry as occasion may require: *Provided*, That the said company shall in no case be required to make or cause to be made more than one such bridge or causeway through each plantation or lot of land, for the accommodation of any one person owning or possessing land through which said railroad may or shall pass, and the said causeway or causeways, when so made, shall be maintained and kept in repair by the said company; and if the said company shall refuse or neglect to make such causeway or causeways, or when made to keep the same in good repair, the said company shall be liable to pay any person aggrieved thereby all the damages sustained by such person in consequence of such refusal or neglect, to be sued for and recovered before any magistrate or any court having cognizance thereof; and the service of process upon any officer of said company shall be as good and available in law as if served upon the president thereof: *Provided*, That this act shall not be so construed as to prevent owners of land through whose property the said railroad may pass from constructing a bridge, causeway, or crossing place over or under said railroad, in conformity with such as are usually made by said company.

Proviso.

Penalty for neglect.

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2d proviso.

SECTION 13. On the completion of the said railroad or any portion thereof not less than ten miles, the same shall be esteemed a public highway for the conveyance of passengers and the transportation of merchandise and commodities, under such regulations as shall be prescribed by the directors; and it shall and may be lawful for the said company to demand and receive such sum or sums of money for tolls, of persons and property, as they shall think, from time to time, reasonable: *Provided*. [Proviso, relative to rates of toll repealed and supplied by act of 10th April, 1846.—See page 13.]

Rules and regulations for transportation, &c.

SECTION 14. The president and directors shall have full power to purchase with the funds of the said company, and place on the said railroad, all machines, vehicles, carriages, and teams of any kind whatsoever, which they may deem proper and necessary for the purposes of transportation, and that they may also, to any extent which they may deem advisable, transport all goods, wares, minerals, and merchandise or other articles that may be offered them for transportation, and all passengers wishing to be conveyed on their railroad, and the said president and di-

Machines, wagons, carriages and teams for transportation

rectors may charge for toll and freight on all articles and for passengers so conveyed by them, their officers and agents, not exceeding twice the rates granted in the preceding section of this act for tolls alone: *Provided*, That if the said machines, wagons, vehicles, carriages, and teams shall be so used on the said railroad as to prevent or render unsafe the travelling upon any canal or public road now constructed or laid out, on or near the line of the said railroad, the legislature may order and direct such rules and regulations for the said machines, wagons, vehicles, carriages, and teams as will secure such travelling safe and uninterrupted, and if such travelling shall be unsafe or interrupted, the court of quarter sessions of the respective counties through which the said railroad shall pass may order and direct such rules and regulations until the legislature shall have acted thereupon.

Tolls and freight.

Proviso.

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SECTION 15. Dividends of so much of the profits of the institution as shall appear advisable to the directors shall be declared at least twice in every year, and paid to the stockholders on demand, at any time after the expiration of ten days therefrom, but they shall in no case exceed the amount of the net profits actually acquired by the company, so that the capital stock shall never thereby be impaired; if the said directors make any dividend which shall impair the capital stock of said institution, the directors consenting thereto shall be liable in their individual capacities to said company for the amount of stock so divided, and each director present when such dividend is made shall be adjudged to be consenting thereto, unless he forthwith enter his protest on the minutes of the board and give public notice to the stockholders at the declaring of such dividend.

Dividends.

Liability of directors.

SECTION 16. If it shall appear to the said company that the amount of capital authorized by this act is insufficient to complete the said railroad, and to accomplish the several objects of this charter, it shall be lawful for the stockholders assembled at any annual or special meeting to increase the said capital to the necessary amount, by increasing the number of shares and directing an additional subscription: *Provided*, [Proviso limiting the amount of capital repealed by act of 10th April, 1846.—See page 13.]

Capital may be increased.

Proviso.

SECTION 17. If the said company shall not commence the construction of the said railroad within the term of five years from the passing of this act, or if after the completion of the said railroad the said corporation shall suffer the same to go to decay and be impassable for the term of two years, this charter shall become null and void except so far as compels said company to make reparation for damages.

Time of commencing work, etc.

Lateral roads to connect.

SECTION 18. The said company shall not prevent any person or persons being owner or owners of lands bordering on said railroad or adjacent thereto, from making such lateral roads, and to connect them with said railroad, from their said lands, as the said person or persons may conceive necessary, but so as not to interfere with or impede the use thereof.

Statement of accounts, etc., to be made to the legislature.

SECTION 19. At the end of the third year after the charter shall be obtained, and at the end of each year thereafter, there shall be furnished to the legislature an abstract of the accounts of the company, showing the amount of the capital paid in and the debts of the said company, the amount received for tolls and transportations, the rates charged on the amount of dividends declared, which abstract shall be verified by the oath or affirmation of the president or treasurer of said company, and the said company shall pay annually into the treasury of the Commonwealth a tax of eight per cent. on all dividends which may exceed six per cent. per annum on the capital stock actually paid in.

Tax on dividends.

SECTION 20. If the said company shall at any time misuse or abuse any of the privileges herein granted, the legislature may resume, all and singular, the rights and privileges hereby granted to the said corporation; the legislature also reserves the right to purchase the rights of said company and the railroad, with its appurtenances, at any time after thirty years from the passage of this act, paying to said company a sum of money, which, together with the tolls received, shall be equal to the cost and expenses of said railroad with an interest of eight per cent. per annum thereon.

Legislature may resume the rights and privileges.

May purchase the road, etc.

LEWIS DEWART,
Speaker of the House of Representatives.
J. R. BURDEN,
Speaker of the Senate.

Approved the third day of April, anno Domini one thousand eight hundred and thirty-seven.

JOS. RITNER.

AN ACT for the relief of the overseers of the poor of the borough of Erie, and for other purposes.

Charter revived.

SECTION 5. That the "Act to incorporate the Pittsburgh and Connellsville Railroad Company," passed on the third day of April, one thousand eight hundred and thirty-seven, be revived, extended, and continued in force upon the same terms, conditions, and limitations, from and after the passage of this act, as were contained in the original act, from and after the date of its passage: *Provided, however*, That the shares of stock be reduced

Shares reduced to $50, &c.

219 from one hundred dollars to fifty dollars, and that the amount to be paid on each share at the time of subscribing be reduced from five dollars to two dollars and fifty cents: *And provided also*, That the commissioners named in the original act, or the survivors of them, have the same authority and power to act, and upon the same conditions and under the same limitations as those commissioners had under the original act.

Counties, cities, boroughs, &c., authorized to subscribe.

SECTION 6. That the counties of Allegheny, Westmoreland, Fayette, and Somerset, and any city, borough, or incorporated company, shall have authority to subscribe thereto as fully as any individual could do, and shall be represented at elections, and in other acts of said company, by agents duly appointed by the commissioners of the respective counties, or by the mayors, chief officers, and the presidents of said cities, boroughs, and incorporated companies; all which subscriptions may be required in instalments as the company may think proper: *Provided*, That no more than one-third of the money subscribed shall be required in any one year.

How represented at elections.

Power of Co. relative to route, &c.

SECTION 7. That said company shall have full power and discretion to select any route from the city of Pittsburgh to Turtle creek which may be deemed most eligible and advantageous, and may extend said railroad beyond Connellsville to Smithfield, or any other point on the waters of Youghiogheny and within the limits of this commonwealth.*

Repealed the next day, 19 Ap., 1843.† P. L. 394.

Approved 18th April, 1843.
P. L. 334.

AN ACT authorizing the laying out of a State road from the borough of Orwigsburg, Schuylkill county, to intersect a public road leading from Easton to Mauch Chunk, and for other purposes.

Rates of toll.

SECTION 9. That the rates of toll authorized to be charged

220 by the thirteenth section of "An act to incorporate the Pittsburgh and Connellsville Railroad Company," approved April the third, one thousand eight hundred and thirty-seven, shall not exceeed two and a half cents per mile for each passenger, four cents per mile for each ton of two thousand pounds for freight, three cents per mile for each passenger car, and two cents per mile for each burden or freight car, every four wheels being computed as a car; and at all general meetings or elections

* Extended to any point in Somerset or Bedford counties by act of 18th April, 1853 —See page 17.

† So much of the 7th sec. of the act passed April, 1843, entitled, &c, as authorizes the P. and C R Co. to extend their railroad beyond Connellsville be, and the same is hereby, repealed.

By the 6 s. of act of 3 Ap., 1846, P. L. 239, the 7 resolution of the resolution entitled a resol. legalizing the election of a justiceof the peace in Dillsburg, and as approved 19th Ap., 1843, is hereby repealed; and the 7th s. of the original act for the relief of the overseers of the poor, &c., passed 18 Ap., '43, is hereby cont'd in full force.

Scale of voting. by the stockholders of said company, each share of stock shall entitle the holder or holders thereof to one vote, and each ballot shall have indorsed thereon the number of shares thereby represented; and the provisos to the thirteenth and sixteenth sections of said act be, and the same are hereby, repealed.

Provisos repealed.

Approved 10th April, 1846.

P. L. 287.

Letters patent.

PENNSYLVANIA, *ss*:

In the name and by the authority of the Commonwealth of Pennsylvania, Francis R. Shunk, governor of the said Commonwealth, to all to whom these presents shall come, sends greeting:

Whereas by an act of the general assembly of [L. S.] this Commonwealth, approved the third day of April, one thousand eight hundred and thirty-seven, entitled "An act to incorporate the Pittsburgh and Connellsville Railroad Company," and the several supplements thereto, (titles and dates of supplements omitted,) it is, amongst other things, provided and enacted that when two thousand shares or more shall be actually subscribed and two dollars and a half paid on each share to the commissioners, the said commissioners, or any ten of them, shall certify the same under oath or affirmation to the governor of this Commonwealth, and on receipt of such certificate, the governor shall, by letters patent, under his hand and the seal of the Commonwealth, create and erect the subscribers, and if the subscription be not full at the time, then those also who shall thereafter subscribe to the whole number of shares aforesaid, into a body politic and corporate, in deed and in law, by
221 the name, style, and title of the "Pittsburgh and Connellsville Railroad Company." And whereas Thomas Bakewell, Lewis Peterson, George Darsie, Thomas S. Clarke, Joseph Pennock, Jesse Carothers, James Kelly, James Crossan, Wm. Robinson, jr., and John B. Butler, ten of the commissioners named in the said act of the general assembly and the supplements thereto, have certified to me under oath that the following-named persons have subscribed two thousand and more shares of the capital stock of the said company, and actually paid two dollars and fifty cents on each share at the time of subscribing, viz: James Wood, Lyon, Shorb & Co., and others.

Now know ye, that by virtue and in pursuance of the power and authority to me given in and by the first-recited act of assembly and the several supplements there-

to, I, the said Francis R. Shunk, governor of the Commonwealth, create and erect the subscribers, and also all those who shall hereafter subscribe to the number of shares authorized by the said acts of assembly and the supplements thereto, into a body corporate and politic, in deed and in law, by the name, style, and title of the Pittsburgh and Connellsville Railroad Company, and by the same name the subscribers shall have perpetual succession, and all the privileges, franchises, and immunities incident to a corporation, and may sue and be sued, implead and be impleaded, in all courts of record and elsewhere, may purchase, receive, have, hold, and enjoy to them and their successors and assigns, lands, tenements, and hereditaments, goods, chattels, and all estate, real, personal, or mixed, of what kind or quality soever, and the same from time to time to sell, mortgage, grant, alien, or dispose of, and make dividends of such portions of the profits as they may deem proper, and also may make and have a common seal, and the same alter and renew at pleasure, and generally may do all and singular the matters and things which to them it shall lawfully appertain to do for the well being of the said corporation and the due management and ordering of the affairs and business of the same, and generally to have, possess, and enjoy all the powers, authority, rights, and privileges granted and authorized by the act of assembly first before recited, and the several supplements thereto incorporating said company, and subject to all the duties, requisitions, pro-
222 visions, and restrictions specified and enjoined by the same and other laws of this Commonwealth.

Given under my hand and the great seal of the State, at Harrisburgh, this eleventh day of June, in the year of our Lord one thousand eight hundred and forty-six, and of the Commonwealth the seventieth.

By the governor:

J. MILLER,
Secretary of the Commonwealth.

(Act 15 Mar., 1847, P. L., 360, the company authorized to make their road to Ohio, refunding such stockholders as shall not agree, and relieving their subscriptions.)

(Act of 11 Ap., '48, incorporates the Ohio and P. R. R. Co.—P. L., 1849, p. 754.)

AN ACT authorizing the cities of Pittsburgh and Allegheny, and the boroughs of West Newton and Connellsville, to subscribe to the stock of the Pittsburgh and Connellsville Railroad Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the author-*

Certain cities and boroughs authorized to subscribe.

ity of the same, That the cities of Pittsburgh and Allegheny and the boroughs of West Newton, in the county of Westmoreland, and Connellsville, in the county of Fayette, are hereby authorized and empowered, by their corporate authorities, to subscribe for shares in the capital stock of the Pittsburgh and Connellsville Railroad Company, each of said cities not exceeding ten thousand shares, and each of said boroughs not exceeding two thousand shares, and to borrow money to pay therefor, and to make provision for the payment of the principal and interest of the money so borrowed, by the assessment and collection of such taxes as may be necessary for that purpose, and the certificates of loan to be issued by either of said corporations for the purpose aforesaid, may be received by said "Pittsburgh and Connellsville Railroad Company" in payment of instalments on shares subscribed by said corporations, on such terms as shall be agreed upon between said company and said corporations: *Provided*, That no bond shall be issued for a less amount than one hundred dollars: *And provided further*, That the several acts of assembly limiting the debt of said cities shall not be construed to apply to any subscription which may be made under the authority of this act, or to any debt incurred therefor.

Number of shares.

Authority to borrow money, &c.

Certificates of loan.

Proviso.

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SECTION 2. That the directors of the said Pittsburgh and Connellsville Railroad Company are hereby authorized to pay to the shareholders entitled to receive the same, interest at the rate of six per centum per annum on all instalments paid by them, which interest shall be charged to the cost of construction, and continue to pay the same until the road shall be completed, and that until the period for which a dividend shall be declared, all the profits and earnings of the road shall be credited to the cost of construction: *Provided*, That no stockholder who shall neglect to pay up the instalments as called for shall be entitled to receive interest on the same: *And provided further*, That the stock of said company shall not be subject to any tax in consequence of the payment of interest hereby authorized.

Interest on instalments.

Provisos.

Approved April 12th, 1853.

AN ACT to incorporate the Safe Harbor and Susquehanna Turnpike Road Company; authorizing the widening of Locust street, in Lancaster City; relative to subscriptions to the capital stock of the Connellsville Railroad Company, &c.

SECTION 5. That the several counties heretofore authorized to subscribe to the capital stock of the Pittsburgh and Connellsville Railroad Company, be, and the same are hereby, authorized to borrow money to pay for such subscription, and to make provision, for the payment of the principal and interest of the money so borrowed, as in

Authority to counties to borrow money, &c.

other cases of loans of said counties, and no bond shall be issued for a less sum than one hundred dollars, and the certificates of loan or bonds issued or to be issued by either of the said counties for the purpose aforesaid, bearing an interest of six per centum per annum, payable half yearly, may be received as cash by the said railroad company, in the payment of instalments on shares subscribed by such county: *Provided*, That whenever certificates of loan or bonds shall be given by such county in payment of subscriptions, the same shall not be sold by said railroad company for less than their par value, and so much of the act incorporating said company as limits the route of their railroad to the course of the Monongahela and Youghiogheny rivers, be, and the same is hereby, repealed, so far as the same affects that portion of the line lying between the city of Pittsburgh and a point on the Youghiogheny river not less than six miles below Connellsville; and the said railroad company are hereby authorized to mortgage or otherwise encumber their said road, and any real and personal estate which may belong to it, for the purpose of carrying out the privleges granted by the act and the several supplements thereto incorporating the same; that the bonds which may be issued by any county, corporation, or municipality, as also the bonds or certificates which may be issued by said company to the stockholders in the same, shall not be subject to taxation until the clear profits of said railroad shall amount to six per centum: *Provided*, That no bond shall be issued for a less sum than one hundred dollars.

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Bonds and certificates of loan.

Proviso.

Limits of route repealed.

Authority to mortgage, &c.

Bonds and certificates, when subject to taxation.

Proviso.

SECTION 6. That the Pittsburgh and Connellsville Railroad Company are hereby authorized to extend their road to any point they may select in Somerset or Bedford counties, so to form a connection with the Chambersburg and Allegheny railroad, or any other railroad that may be constructed.

Authority to extend road.

Approved the 18th day of April, A. D. 1853.

AN ACT relative to the Pittsburgh and Connellsville Railroad Co.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same*, That the Pittsburgh and Connellsville Rail road Company be, and the same is hereby, authorized to issue its bonds, heretofore authorized, bearing any rate of interest not exceeding seven per centum per annum, convertible at the will of the holder into stock of the company, at par, or on such terms as may be agreed upon, and any sale of said bonds for a less amount than their par value shall not be construed to be a violation of the usury laws of this Commonwealth.

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Authority to issue 7 per cent. convertible bonds.

May be sold for less than par value.

Authority to Uniontown and Waynesburgh Railroad Co. to transfer rights, privileges, &c.

SECTION 2. That the Uniontown and Waynesburg Railroad Company, chartered by act of April eighteenth, one thousand eight hundred and fifty-three, be, and hereby is, authorized to transfer all its rights, powers, and privileges, on such terms as may be agreed upon, to the Pittsburgh and Connellsville Railroad Company; which is hereby authorized to construct a branch road on the contemplated route of said Uniontown and Waynesburgh railroad.

Authority to P. and C. R. R. Co. to construct a branch road.

Provisions of act of the 12th of April, 1853, extended to borough and township of Somerset.

SECTION 3. That the provisions of an act entitled "An act authorizing the cities of Pittsburgh and Allegheny, and the boroughs of West Newton and Connellsville, to subscribe to the stock of the Pittsburgh and Connellsville railroad," and for other purposes, approved the twelfth day of April, anno Domini one thousand eight hundred and fifty-three, be, and the same is hereby, extended to the borough and township of Somerset.

Approved the 6th of April, 1854.

AN ACT to extend the Montevue railroad, and connect the same with the Pittsburgh and Connellsville railroad, in the county of Somerset.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same*, That the Montevue Railroad Company, incorporated by an act of the State of Maryland, be, and the same is hereby, authorized to extend their railroad, with one or more tracks, from the southern line of Pennsylvania to a point at or near Meyer's Mills, in the county of Somerset, and connect the same with the Pittsburgh and Connellsville railroad, at such point as may be mutually agreed upon between the said company and the Pittsburgh and Connellsville Railroad Company: *Provided*, That the damages which may be done to private property by the construction of the said extension within this Commonwealth shall be assessed and paid in the manner provided by an act regulating railroad companies, passed the nineteenth day of February, one thousand eight hundred and forty-nine.

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SECTION 2. That it shall be the duty of the president and directors of said company, as soon as the said extension of their road is completed and in use for transportation, to prepare a full and accurate statement of the cost thereof, under the oath or affirmation of the president and secretary of said company, and communicate the same to the auditor general of this Commonwealth, who shall file the statement in his office.

SECTION 3. That the stock of said company, to an amount equal to the cost of that portion of their road situate in Pennsylvania, shall be subject to taxation by this Commonwealth in the same manner and at the same rates as other similar property is subject; and it shall be

the duty of the said company to cause their treasurer, upon the declaration of any dividend after said portion of the railroad shall have been completed, to retain out of said dividend and pay into the treasury of this State the tax to which such portion of stock may be liable.

Approved the 19th of April, 1854.

A FURTHER SUPPLEMENT to the act incorporating the Pittsburgh and Connellsville Railroad Company.

Whereas, by an act of assembly of the Commonwealth of Pennsylvania, approved the eighteenth day of April, one thousand eight hundred and forty-three, it is, amongst other things, provided, "that any city, borough, or incorporated company shall have authority to subscribe to the capital stock of the Pittsburgh and Connellsville Railroad Company:" Therefore—

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SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same,* That the provisions of the act of assembly, passed the twelfth day of April, one thousand eight hundred and fifty-three, authorizing the cities of Pittsburgh and Allegheny, and the boroughs of West Newton and Connellsville to subscribe to the stock of the Pittsburgh and Connellsville Railroad Company, and the same are hereby extended to the boroughs of McKeesport and Birmingham, in the county of Allegheny, and that the said company is hereby authorized and empowered to sell any bonds held by it, at any rate the amount whereof shall not be less than would make them at par at seven per centum interest.*

Provisions of act of 12th of April, 1853, extended to boroughs of M'Keesport and Birmingham.

Rate at which company is authorized to sell bonds.

Approved April 26th, 1854.

A SUPPLEMENT to the act incorporating the Pittsburgh and Connellsville Railroad Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by authority of the same,* That the provisions of the fourth and fifth sections of the act of assembly, approved the twenty-seventh day of March, anno Domini one thousand eight hundred and forty-eight, entitled "A further supplement to the act to incorporate the Pennsylvania Railroad Company," passed April thirteenth, one thousand eight hundred and forty-six, and the supplement to the act incorporating the

Provisions of the 4th and 5th sections of the supplements to the charter of Penn'a R. R. Co., approved March 27th, 1848; extended. —See page 23.

* See act of 27th of March, 1855, page 22.

Supplement to the charter of Penn'a R. R. Co., approved the 20th of March, 1849; extended.—See page 25.

Pennsylvania Railroad Company, approved the twentieth day of March, one thousand eight hundred and forty-nine, relating to the assessment of land damages and the crossing or occupying turnpike or public roads, be, and the same are hereby, extended to the Pittsburgh and Connellsville Railroad Company, so far as the same may be applicable to said company, and that all former acts or supplements to acts inconsistent therewith be, and the same are hereby, repealed, and the said Pittsburgh and Connellsville Railroad Company are hereby authorized to extend and construct the road to their depot grounds, situate in the second ward of the city of Pittsburgh, between Breckenridge street and the Monongahela river; also to connect with the Pennsylvania railroad at or near Turtle creek, in the county of Allegheny, and also to connect with the Monongahela river, at the mouth of Dunlop's creek, in Fayette county: *Provided*, That the provisions of this act shall not apply to the assessment of damages or to the occupation or appropriation of public roads on any portion of the line of the railroad of said company west of the mouth of Turtle creek, in the county of Allegheny.

Repealed.

Authorized to extend and construct road to depot grounds in second ward, Pittsburgh.

Authorized to connect with P'a R. R. at Turtle creek, in Allegheny co., and with Monongahela river, at the mouth of Dunlop's creek, in Fayette county.

Proviso.

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HENRY K. STRONG,
Speaker of the House of Representatives.
WM. M. HEISTER,
Speaker of the Senate.

Approved the twenty-first day of March, anno Domini one thousand eight hundred and fifty-five.
JAMES POLLOCK.

AN ACT relating to the subscriptions of Allegheny county to certain railroad companies.

Provisions of act of the 2d of March, 1855, extended.—See page 27.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That the provisions of an act entitled "An act supplemental to an act entitled an act to incorporate the Cleveland and Pittsburgh Railroad Company," approved the second day of March, one thousand eight hundred and fifty-five, be, and the same are hereby, extended to all railroad companies, to the capital stock of which companies subscription has been made by the county of Allegheny, on special contract or agreement with the county commissioners.

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HENRY K. STRONG,
Speaker of the House of Representatives.
WM. M. HEISTER,
Speaker of the Senate.

Approved the twenty-seventh day of March, anno Domino one thousand eight hundred and fifty-five.

JAMES POLLOCK.

A FURTHER SUPPLEMENT to an act to incorporate the Pennsylvania Railroad Company, passed April 13th, 1846.

SECTION 4. That when the Pennsylvania Railroad Company cannot agree with the owner or owners of any lands or materials for the compensation proper for the damage done, or likely to be done to, or sustained by any such owner or owners of such lands or materials which said company may enter upon, use, or take away in pursuance of the authority given them by the act to which this is a supplement, or by reason of the absence or legal incapacity of any such owner or owners, no such compensation can be agreed upon, the court of common pleas of the proper county, on application thereto by petition, either by said company or owner or owners, or any one in behalf of either, shall appoint five disinterested persons of the next adjoining county or counties, none of whom shall be residents of any of the counties through which said railroad shall pass, and to fix a time, not less than twenty, or more than thirty days thereafter, for said viewers to meet upon the premises where the damages are alleged to be sustained, of which time and place ten days' notice shall be given by the party petitioning to said viewers, and to the other party, and the said viewers having been first sworn or affirmed by some power competent to administer oaths, faithfully, justly, and impartially to decide, and true report to make concerning all the matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act; and, having viewed the premises, they shall estimate and determine the quantity, quality, and value of said lands so taken or occupied, or to be taken and occupied, or the materials so used or taken away, or to be used or taken away, as the case may be, and having a due regard to, and making just allowances for, the advantages which may have resulted, or which may seem likely to result, to the owner or owners of said lands or materials in consequence of the opening or making of said railroad, or the construction of works connected therewith; and, after having made a fair and just comparison of said advantages or disadvantages, they shall estimate and determine whether any, and, if any, what amount of damages have been sustained or may be sustained, and to whom payable, and make report thereof to the court; and if any damages be awarded, and the report be confirmed by said court,

Damages, how to be assessed.

Court of com. pleas of proper county to appoint viewers.

Who may be appointed viewers —time of meeting.

Notice.

Viewers sworn or affirmed.

Duties of viewers.

Report.

Judgment and execution for award.

judgment shall be entered thereon, and if the amount thereof be not paid, execution may issue thereon, as in other cases of debt, for the sum so awarded; and the cost and expenses incurred shall be defrayed by said railroad company; and the said viewers shall be entitled to two

Compensation of viewers.

dollars per day for each of them for the time necessarily employed in performing the duties hereinbefore pre-

Proviso—when judges are interested.

scribed: *Provided*, That nothing herein contained shall authorize the said company to enter upon any lands, or take any property without making compensation to the owners of said property, or give adequate security therefor: *And provided*, That if either or all of the judges of the court of common pleas aforesaid is, or are, interested in the said railroad as officers, stockholders, contractors, or otherwise, then the viewers aforesaid shall be selected and appointed by the sheriff and commissioners of the proper county, in like manner and with like powers as if appointed by the court of common pleas: *Provided further*, That if the proper officer of said company, at any time before application made by either party for the appointment of viewers in the manner hereinbefore di-

When tender of compensation for damages will relieve from costs.

rected, shall tender to the owner or owners of said lands or materials a sum of money in full compensation for his or their said damages, said company shall not be liable for costs on any subsequent proceedings, unless

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such owner or owners of land or materials shall be awarded a larger sum than the previous tender of said company.

Turnpike or public roads—changing site of.

SECTION 5. That if said railroad company shall find it necessary to change the site of any portion of any turnpike or public road, they shall cause the same to be reconstructed forthwith, at their own proper expense, on the most favorable location, and in as perfect a manner as

Proviso.

the original road: *Provided*, That the damages incurred in changing the location of any road authorized by this section shall be ascertained and paid by said company in the same manner as is provided for in regard to the location and construction of their own road.

Approved the 27th day of March, A. D. 1848.

A SUPPLEMENT to the act incorporating the Pennsylvania Railroad Company.

Preamble.

Whereas the legislature, by the fifth section of an act passed the twenty-seventh March, one thousand eight hundred and forty-eight, entitled "A further supplement to an act to incorporate the Pennsylvania Railroad Company," did provide that if said railroad company shall find it necessary to change the site of any portion of any turnpike or public road they shall cause the same to be reconstructed forthwith, at their own proper expense, in the most favorable location and in as perfect a manner as

the original road; but there is no provision made for compelling the said company to comply with this law. Therefore—

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That if in the construction of their road by the Pennsylvania Railroad Company it shall have been or may hereafter be necessary to change the site of any portion of any turnpike or public road when the necessary time shall have elapsed to have enabled the said railroad company to comply with the provisions of the fifth section of the act of the twenty-seventh March, one thousand eight hundred and forty-eight, requiring them to reconstruct such turnpike or public road, it shall be the duty of the court of quarter sessions of the county in which such turnpike or public road shall be located, upon the petition of the company owning the said turnpike, or of any twelve or more citizens of the township in which the said public road may be, to appoint three competent persons, citizens from an adjoining county, through which the said road does not pass, as viewers, whose duty it shall be to view the place where the said turnpike or public road was, and make report to the said court at their next session whether the said Pennsylvania Railroad Company have complied with their duty in making said turnpike or public road as they are required by the said law to do; and if the said viewers shall report to the said court that the Pennsylvania Railroad Company has complied with the provisions of the said act of assembly, and the said report shall be approved by the court, an order shall be then made that the costs and expenses of the said view shall be paid by the petitioners; but if the said viewers shall report to the said court that the said company has not complied with the provisions of the said act of assembly, and the said report shall be approved by the court, the expenses thereof shall be paid by the said railroad company, then it shall be the duty of the said court to order and decree that the said turnpike or public road, as the case may be, shall be made, finished, and completed as the said Pennsylvania Railroad Company, by the provisions of the said fifth section of the act of the 27th of March, A. D. 1848, were bound to finish and complete the same: *Provided*, That if either party shall be dissatisfied with the decree they may have the right to a review under the provisions of this act.

When the site of any portion of a turnpike or public road is changed and not reconstructed within the proper time application to be made to the court of quar'r sessions.

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Who to make the application.

Viewers to be appointed, and their duties.

Order of court when viewers report that the railroad company has complied with the act of assembly.

Who to pay costs.

When report is against the company.

Order of court.

Right to a review.

Approved the 20th of March, A. D. 1849.

233 **AN ACT supplemental to an act entitled an act to incorporate the Clevelannd and Pittsburgh Railroad Company.**

SECTION 1. *Be it enacted by the senate and house of representatives of the Commenwealth of Pennsylvonia in general assembly met, and it is hereby enacted by the authority of the same,* That the Cleveland and Pittsburgh Railroad Company be, and it is hereby, authorized to sell any bonds held by it in payments for subscriptions made to the capital stock of said company by the counties of Beaver and Allegheny, at such rates below par as may be agreed upon between said company and the parties purchasing the same: *Provided,* That no sale shall be consummated until the commissioners of the county which issue the bonds shall have by resolution determined the lowest price at which said railroad company may sell the same, said resolution to be recorded in the minutes of their proceedings, and so much of any act or acts of assembly as is hereby altered or supplied, be, and the same is hereby, repealed.

Authority to sell he bonds of Beaver and Allegheny counties below par.

Proviso.

County com'rs to determine by resolution the lowest price.

Resolution to be recorded in minutes of their proceedings.

HENRY K. STRONG,
Speaker of the House of Representatives.
WM. M. HEISTER,
Speaker of the Senate.

Approved the second day of March, anno Domini one thousand eight hundred and fifty-five.

JAMES POLLOCK.

AN ACT to incorporate the Pittsburgh and Connellsville Railroad Company in the State of Maryland.

Whereas an act has passed the legislature of the State of Pennsylvania, entitled an act to incorporate the Pittsburgh and Connellsville Railroad Company,
234 under which said company has been organized, and is now in existence in the State of Pennsylvania, and whereas it is desirable that the said Pittsburgh and Connellsville Railroad Company should be incorporated in this State:

Preamble.

SECTION 1. *Be it enacted by the general assembly of Maryland,* That the Pittsburgh and Connellsville Railroad Company be, and it is hereby, declared incorporate, as a body corporate in the State of Maryland, by the name and style of the Pittsburgh and Connellsville Railroad Company, and by that name shall be capable in law of purchasing, holding, leasing, selling, and conveying estates, real, personal, and mixed, so far as shall be necessary for the purposes hereinafter mentioned, and shall have perpetual succession, by said corporate name may sue and be sued, and may have and use a common seal, which they shall have power to alter and renew at pleasure, and shall have and enjoy, and may exercise, all the rights, powers, and privi-

Incorporate.

Style.

Corporate privileges.

leges which other corporate bodies may lawfully do for the purposes of this act.

SECTION 2. *And be it enacted*, That the president and directors of said company shall build, and they are hereby invested with all the rights and powers necessary to the construction and repair of a railroad from the Baltimore and Ohio railroad, and the Chesapeake and Ohio canal, at the town of Cumberland, to such point on the dividing line between the States of Maryland and Pennsylvania, to be by them determined, to join and connect with any railroad that shall be constructed in the State of Pennsylvania, from the city of Pittsburgh to said dividing line, and for the construction and repair of a railroad for any part of said route, not exceeding sixty-six feet wide, with as many sets of tracks as said company may deem necessary; and the said company may cause to be made, or contract with others for making any part of the same, and they, their agents, and those with whom they may contract for making any part of the same, or their agents, may enter upon and use and excavate all lands that may be wanted for the site of said road, or the erection of warehouses or other works necessary to said road, or for any other purpose necessary or useful in the construction or repair of said road or its works, and that they may build bridges, fix scales and weights, may lay rails, take and use any earth, timber, gravel, stone, or other materials which may be wanted for the construction or repair of any part of said road or any of its works, and may make and construct all works whatsoever which may be necessary and expedient in order to the proper completion of said road.

May construct road from Cumberland to State line.

May connect with any railroads from Pittsburgh to State line.

Railroad not to exceed 66 feet in width.

May enter upon and use lands necessary for road, warehouses, &c.

May take and use material.

SECTION 3. *And be it further enacted*, That the president and directors of said company, or a majority of them, or of any person or persons authorized by a majority of them, may agree with the owner or owners of any land, earth, timber, gravel, stone, or other materials; or any improvements which may be wanted, for the construction or repair of any of said roads or of any of their works, for the purchase and use or occupation of the same, and if they cannot agree, or if the owner or owners, or any of them, be a feme covert, under age, non compos mentis, or out of the county in which the property may lie when such land or materials shall be wanted, application may be made to any justice of the peace of such county, who shall thereupon issue his warrant under hand and seal, directed to the sheriff of said county, requiring him to summon a jury of twenty inhabitants of said county, not related, nor in anywise interested, to meet on the land, or at the property or materials to be valued on a day named

Damages—how ascertained and adjusted.

On application to justice of the peace, sheriff required to summon jury.

Time of meeting of jury.

in said warrant, not less than ten nor more than twenty days after issuing the same; and if at said time and place any of said jurors summoned do not attend, the said sheriff shall immediately summons as many jurors as may be necessary, with those in attendance, to furnish a panel of twenty jurors in attendance, and from them, each party of its, his, her, or their agent, if either be not present in person or by agents, the sheriff for him, her, it, or them may strike off four jurors and the remaining twelve shall act as the jury of inquest of damages, and before they act as such, the said sheriff shall administer to each an oath or affirmation, as the case may be, that he will justly and impartially value the damages, which the owner or owners will sustain, by the use or occupation of the same, required by the company, and the said jurors shall reduce their inquisition to writing, and shall sign and seal the same, and it shall then be returned by the said sheriff to the clerk of his county, and by such clerk filed in his court, and shall be confirmed by the said court at its next session, if no sufficient cause to the contrary be shown; and when confirmed, shall be recorded by the said clerk at the expense of said company; but if set aside, the said court may direct another inquisition to be taken in the manner above prescribed, and such inquisition shall describe the property taken, or the bounds of the lands condemned, and the quantity or duration of the interest in the same, valued for the company, and such valuation when paid or tendered to the owner or owners of said property, or his, her, or their legal representatives, shall vest in said company the estate and interest in the same thus valued as fully as if it had been conveyed by the owner or owners of the same; and the valuation, if not received when tendered, may at any time thereafter be received from the company without costs, by the owner or owners, or his, her, or their legal representative or representatives.

Panel of twenty jurors to be summoned by sheriff.

Twelve jurors selected to act.

Jurors to be qualified by the sheriff.

Inquisition of jurors in writing to be returned by sheriff to clerk of court.

If not confirmed court may order a new inquisition.

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Valuation when paid or tendered to owner.

Valuation may at any time be received by the owner.

SECTION 4. *And be it enacted*, That whenever in the construction of said road or roads, it shall be necessary to erect or intersect any established road or ways, it shall be the duty of the president and directors of said company so to construct said road across such established road or ways, as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual proper wagon ways across said road or roads from one part of his land to the other.

Railroad not to impede passage along any established road.

Wagon ways to be made for individuals whose land the railroad divides.

SECTION 5. *And be it enacted*, That the said president and directors, or a majority of them, shall have power to purchase with the funds of the said company, and place on any railroad constructed by said company or by the

Meyers' Mills Plank Road Company, or by both of them within the States of Maryland or Pennsylvania, all machines, wagons, vehicles, or carriages of any description whatsoever, which they may deem proper for the purpose of transportation on said road; and they shall have power to charge for tolls upon, and the transportation of persons, goods, produce, merchandise, or property of any kind whatsoever transported by them along said road, any sum not exceeding the following rates, on all goods, produce, merchandise, or property of any description whatsoever transported by them, not exceeding two cents per ton of 2,240 pounds per mile for tolls, and two cents per ton of 2,240 pounds per mile for transportation, and not exceeding three cents per mile for each passenger; and it shall not be lawful for any other company or any any other person or persons whatsoever to travel upon or over any of the roads of said company, or to 237 transport persons, merchandise, produce, or property of any description whatsoever along said roads, or any of them, without the license or permission of the said president and directors of said company, and that the said road, or roads, with all their works, improvements, and profits, and all the machinery of transportation used on said road are hereby vested in "the Pittsburgh and Connellsville Railroad Company," and their successors forever; and the shares of the capital stock of said company shall be deemed and considered personal estate.

Rates of charges for tolls and transportation.

Not lawful for any other company, person, or persons to travel upon or transport persons or property, without permission.

Shares of capital stock deemed personal estate.

SECTION 6. *And be it enacted*, That the president and directors of the Pittsburgh and Connellsville Railroad Company, as soon as this act shall have been passed by the legislature of Maryland, may open books and receive subscriptions in the State of Maryland, and shall have the right and power to use and apply the subscriptions so made to the construction of any part of a railroad which may be constructed, leading from the city of Pittsburgh to the town of Cumberland.

President and directors may open books and receive subscriptions in Maryland.

Authority to apply the subscriptions to any part of the work.

SECTION 7. *And be it enacted*, That full right and privilege is hereby reserved to the citizens of this State, or any company now or hereafter to be incorporated under the authority of this State, to connect with the railroad hereby provided for any other railroad leading from the main route to any part of Allegany county, in this State, provided, that in forming such connection, it shall be made in a manner that shall do no injury to the work of the company hereby incorporated.

Privilege reserved to citizens of Maryland, &c., to connect any Allegany county railroads.

Proviso.

SECTION 8. *And be it enacted*, That all the workshops and manufactories built by said company in this State for the construction and repairing of cars, locomotives, and other machinery, shall be located at or within three miles of the city of Cumberland.

Workshops, &c., of company in Maryland to be located at or within 3 miles of Cumberland.

SECTION 9. *And be it enacted*, That the said company are only authorized to charge and receive for the transportation of passengers and freight along any portion of the line of said road, whether in this State or Pennsylvania, one uniform rate of toll and transportation, and no discrimination shall be made in favor of or against individuals or incorporated companies, and the said company are hereby authorized to receive subscriptions for stock of any incorporated company, and all incorporated companies of this State are hereby authorized to subscribe and hold stock as stockholders in said company, and dispose of the same at pleasure.

Uniform rate of toll and transportation required in Penn'a and Maryland.

All incorporated companies of Maryland authorized to subscribe and hold stock, &c.

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SECTION 10. *And be it enacted*, That the said president and directors shall have power and authority to borrow money for the objects and purposes of said company, and to make and execute bonds and certificates of indebtedness under the sealof said company, for such sum or sums, and payable at such time or times, and to sell and dispose of the same on such terms, as the said president and directors may deem proper, and to pledge the property and income of said company to secure the payment thereof: *Provided*, That nothing herein contained shall be taken to authorize the said company to issue anything in the nature of a bank note or other paper to be used for circulation as a currency.

Authority to borrow money.

To execute bonds and certificates of indebtedness and to sell the same.

Proviso—prohibiting banking privileges.

SECTION 11. *And be it enacted*, That the said company shall be authorized and empowered to use and expend in constructing its road, or any of its works or appurtenances, or for purchasing any engines, cars, vehicles, or carriages to be used on any part of its road, any money or funds which may be subscribed in the State of Pennsylvania or elsewhere, as fully as if the same had been subscribed in the State of Maryland.

Subscriptions in Pennsylvania.

SECTION 12. *And be it enacted*, That upon every subscription that shall be made to the capital stock of said company as hereinbefore provided, there shall be paid, at the time of subscribing, to the president and directors of said company, or to their agents appointed to receive such subscriptions, the sum of two dollars and a half on every share subscribed, and the residue thereof shall be paid in such instalments, and at such times, as may be required by the president and directors of said company, provided that no payment shall be demanded until at least sixty days' public notice of such demand shall have been given by said president and directors in one newspaper published in Pittsburgh, Baltimore, and Cumberland, and if any subscriber shall fail or neglect to pay any instalment, or any part of said subscription thus demanded, for the space of sixty days next after the time the same shall be due and payable, the stock on which the same is demanded shall be forfeited to the company, and may be

$2 50 per share required to be paid at the time of subscribing.

Payment of instalments.

Proviso.

60 days' public notice required.

Failure to pay for 60 days after notice forfeits stock.

May be sold.

sold by the president and directors for the benefit of the said company, but the president and directors may remit any such forfeiture on such terms as they shall deem proper.

Forfeiture may be remitted.

SECTION 13. *And be it enacted*, That the president and directors of said company shall be, and they are hereby, invested with full power and authority to make contracts and arrangements to connect with any existing railroad leading from the town of Cumberland, and to construct a railroad from the place of such connection to the Pennsylvania line, or to purchase any such railroad or any part thereof, and the lands, franchises, and appurtenances held for the purposes of the same, with power to construct and build a railroad from any part of any railroad so purchased to the Pennsylvania line.

President and directors authorized to connect with any existing railroad leading from Cumberland, &c.

SECTION 14. *And be it enacted*, That the said company shall keep in the county of Allegany, in this State, a director, officer, or other agent of said company, and if any legal proceedings shall be commenced against said company in Allegany county, or in the United States courts in this State, legal process in such proceedings may be served on such director, officer, or agent, and such service shall be a good and sufficient service on said company for all purposes whatsoever.

Company required to keep in the county of Allegany, Maryland, a director or agent.

Service of process.

SECTION 15. *And be it enacted*, That this act shall go into force from its passage; and that right and power is hereby reserved to the legislature of this State to alter, change, modify, or repeal this act at its pleasure.

Right reserved by the legislature of Maryland to alter, modify, or repeal.

STATE OF MARYLAND, *sct:*

We certify that the aforegoing is a true copy of an act of the general assembly of Maryland, passed at January session, one thousand eight hundred and fifty-three, entitled an act to incorporate the Pittsburgh and Connellsville Railroad Company in the State of Maryland.

In testimony whereof we hereunto subscribe our names this 21st day of April, in the year of our Lord one thousand eight hundred and fifty-three.

JOS. S. STEWART, JR.,
Clerk of the House of Delegates.
J. PINKNEY,
Secretary of the Senate.

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AN ACT relative to the Pittsburg and Connellsville Railroad Company.

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Preamble.

Whereas, by an act of assembly, entitled "An act to incorporate the Pittsburg and Connellsville Railroad Company," approved third April, one thousand eight hundred and thirty-seven, a corporation, entitled the Pittsburg and Connellsville Railroad Company, was authorized to be created, by which, and the several supplements thereto, said company was empowered to construct a railroad connecting the city of Pittsburg with several of the southern counties of Pennsylvania;

And whereas the purpose of the creation of said company, by its charter and supplements, was the development and improvement of that portion of the State through which it was intended said road was to be constructed;

And whereas the company, by said act and supplements created, have failed to complete the road therein provided for, and have so long delayed the construction of said road, that now, after the lapse of years from the granting of full authority by the State, less than one-half of said line of railroad has been constructed, and the line, or lines, east of Connellsville, authorized by the supplements to said act, not having been completed or prepared for public use;

And whereas it is due to the people of this Commonwealth, and especially those residing in that portion of the State through which said road was intended to pass, that the purpose of the passage of said act and supplements shall be speedily accomplished;

And whereas, by the twentieth section of said act of incorporation, it is provided, that if the said company shall at any time misuse or abuse any of the privileges herein (by said act) granted, the legislature may resume all and singular, the rights and privileges hereby (in said act and its supplements) granted to the said corporation;

And whereas it is further by law provided that the legislature of this Commonwealth shall have power to alter, revoke, or annul any charter, whenever, in
243 their opinion, it may be injurious to the citizens of the Commonwealth, in such manner that no injustice shall be done to the corporators;

And whereas, in the opinion of the legislature, said corporation, by the delay referred to, and by the embarrassments, financial and otherwise, in which said corporation has come to be involved, have misused and abused the powers by said act conferred;

And whereas, in the opinion of the legislature, it is injurious to the citizens of this Commonwealth that the said company should any longer have or enjoy any right, franchise, or privilege to build or construct any railroad, branch, or extension of their existing railroad southwardly or eastwardly from Connellsville; and in consequence of the premises, it is now designed by the legislature, to exercise every right and power them in that behalf enabling, in order that no hindrance or impediment, by reason of location, or any other cause, may exist to the free exercise, by the legislature, of their power to grant the same and other franchises to such corporation or corporations as will promptly extend to that portion of the State the benefit of railway communications, and thus develop speedily that section of the Commonwealth which lies southwardly and eastwardly from Connellsville;

And whereas, by the speedy completion of the line or lines of railway southwardly and eastwardly from Connellsville the interests of the Pittsburg and Connellsville Railroad Company may be materially promoted, through the establishment of a connection between their present finished line and other lines of railway; therefore—

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same,* That all the rights, powers, privileges, and franchises, of every nature and kind whatsoever, authorized or created by the act of assembly approved third April, one thousand eight hundred and thirty-seven, authorizing the incorporation of the Pittsburg and Connellsville Railroad Company, and all supplements thereto, so far as the same, or any of them, authorize the construction of any line or lines of railway southwardly or eastwardly from Connellsville, be, and they are hereby, revoked and resumed by the Commonwealth of Pennsylvania; and all the rights, powers, franchises, and privileges by the said act and its supplements conferred upon the said corporation, for and in respect to all that portion of the lines southwardly and eastwardly from Connellsville, be, and the same are by all and every authority in the legislature for that purpose vested, resumed, revoked, repealed, and put an end to: *Provided, however,* That no injustice shall be done to the corporators, and that they shall, as and for full compensation for all damages and injury done, if to any they can or may be entitled, by the provisions of this act, receive payment for expenditures made in respect to any work done or constructed upon any lines of the said railroad southwardly or eastwardly

Certain rights, powers, privileges, &c., created by the act of incorporation of the Pittsburg and Connellsville Railroad Company, and by supplements thereto, revoked, &c.

Proviso.

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Governor to appoint appraisers.

from Connellsville; and the governor of the Commonwealth shall appoint three competent persons to appraise and value the expenditures so made, and the amount thereof, when so appraised and certified to him in writing, by the parties so appointed, shall be paid to the said Pittsburg and Connellsville Railroad Company by any corporation or corporations hereafter authorized to construct a line or lines of railway southwardly or eastwardly from Connellsville; and the company so paying shall be entitled, in their discretion, to use the work so paid for as part of the line of their railway.

Authorized to make sale to any corporation or corporations.

SECTION 2. That it shall and may be lawful for the said Pittsburg and Connellsville Railroad Company to make sale to any corporation or corporations which may hereafter be created by law, and authorized to construct a line or lines of railways southwardly or eastwardly of Connellsville, of whatever works may have been by the said Pittsburg and Connellsville Railroad Company progressed with towards the construction of said line or lines of railway.

Repeal.

Proviso.

SECTION 3. That all acts and parts of acts inconsistent with the provisions of this act, be, and the same are hereby, repealed: *Provided*, That nothing in this act contained shall be so construed as in anywise to interfere with the charter, locations, or other privileges of the South. Pennsylvania Railroad Company heretofore incorporated under the laws of this Commonwealth.

HENRY C. JOHNSON,
Speaker of the House of Representatives.
JOHN P. PENNEY,
Speaker of the Senate.

We do hereby certify that the bill No. 1,026, entitled "An act relative to the Pittsburg and Connellsville Railroad Company," was presented to the governor on the twenty-ninth day of April, one thousand eight hundred and sixty-four, and was not returned within three days after the meeting of the legislature, in extra session; wherefore it has, agreeably to the constitution of this Commonwealth, became a law in like manner as if it had been signed.

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ADIN W. BENEDICT,
Clerk of the House of Representatives.
GEO. W. HAMERSLY,
Clerk of the Senate.

Harrisburg, August 19, 1864.

AN ACT to incorporate the Connellsville and Southern Pennsylvania Railway Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That U. M. Beechley, Jonas Keim, W. P. Schell, S. L. Russel, John Cessna, Alexander King, Job Mann, F. M. Kimmel, Epsy L. Anderson, John Miller, Joseph Johnston, J. Hartley, William S. Haven, B. F. Jones, William K. Nimick, George W. Litman, J. H. Sewell, George W. Cass, J. N. M'Cullough, Daniel H. Mulvaney, Thomas P. Knox, J. S. Yost, William M'Conkey, George Nickle, Alexander Stutzman, George D. Wolf, William J. Baer, A. H. Coffroth, S. E. Duffield, S. D. Scott, M. Dickson, William Sellers, William Scott Fletcher, James Lyon, J. M'Ilvaine, J. M. Barndollar, O. W. Barnes, Benjamin R. Ashcom, William H. Watson, Israel Painter, R. D. Barclay, Frederick Watts, William M. Watts, Edward M. Biddle, Thomas A. Biddle, E. M. Schrock, A. B. Longaker, David M'Conkey, John Wistar, C. W. Ashcom, John A. Lowry, William H. Slingluff, Theophilus Snyder, J. C. Everhart, Daniel O. Hitner, A. M'Allister, William Dorris, John G. Miles, G. W. Householder, Daniel Salons, J. C. Etnier, Jacob Cresswell, William M'Clelland, D. O. Gehr, T. B. Kennedy, Peter S. Freas, James Nill, A. K. M'Clure, J. Allison Eyster, Thomas Chambers, John M. Cooper, G. R. Messersmith, B. Y. Harnsher, and Daniel Washabaugh, all of the State of Pennsylvania, and William B. Ogden, J. D. T. Lanier, Samuel J. Tilden, and L. H. Meyer, of the State of New York, or any five of them, be, and they are hereby, appointed commissioners to open books, receive subscriptions, and organize a company by the name, style, and title of the Connellsville and Southern Pennsylvania Railway Company, with power to construct a railroad from Connellsville to the Maryland State line, at such point and by such route as to the directors may seem advisable, and to connect the same with any road or roads authorized by the State of Maryland, and to connect the same with the Pittsburg and Connellsville railroad, or any other road at or near Connellsville, now constructed, or that may hereafter be constructed; and to construct a road from any point on said line, to connect with any road or roads in the Susquehanna valley, or west thereof, and with power to make such branches as the directors may deem expedient and necessary in the southern tier of counties of Pennsylvania, with power to extend any or all of said branches to such point or points as to the said directors may seem

Commissioners.

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Title.

Route.

Connection with other roads authorized.

Branches, &c., relative to.

advisable, and connect all or either of them with any road or roads now constructed, or that may hereafter be constructed west of the Susquehanna river; and that the said company shall have authority to cross any railroad or railroads, at grade, with its main roads, branches, and extensions.

Capital stock.

SECTION 2. That the capital stock of said company shall consist of ten millions of dollars, divided into shares of fifty dollars each, with the privilege of increasing the same, from time to time, to such amount as to the directors may seem needful: *Provided, however*, That the Southern Pennsylvania Railroad Company shall perfect the organization of their company within three months after the passage of this act, and proceed immediately to locate and construct said road, and complete their main line within three years.

When organization to be perfected, and main line completed.

Directors authorized to borrow money and issue bonds.

SECTION 3. That the directors of said company be authorized to borrow, from time to time, such sums of money as to them may seem necessary, to provide for the construction and equipment of said railroad and branches, and to issue bonds therefor, in sums of not less than one hundred dollars each, at a rate of interest not to exceed seven per cent. per annum, to be redeemed at such time and place as the directors may agree upon, and may secure the same by one or more mortgages, from time to time, upon the whole, or any part or parts of said railroad, its branches, and extensions, hereby authorized, and upon all or part of the estate, real and personal, acquired or to be acquired, thereto belonging, and upon all of the corporate franchises thereof, or such part as may be mortgaged.

Mortgages.

To pay to the Pittsburg & Connellsville Railroad Co. the amount found due them by the appraisers, &c.

SECTION 4. That the corporation authorized to be created by this act shall pay to the Pittsburg and Connellsville Railroad Company whatever sum may be found due to them by the appraisers appointed by the governor of this Commonwealth, for or by reason of the expenditures made by them in or upon any line of railroad southwardly or eastwardly from Connellsville, or shall have the right to purchase from the Pittsburg and Connellsville Railroad Company all the works so constructed.

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Subject to.

SECTION 5. That the said Connellsville and Southern Pennsylvania Railway Company shall be, in respect to the construction of its roads, branches, and extensions, entitled to all the privileges conferred by, and be governed by all the restrictions contained in the act entitled "An act regulating railroad companies," approved the nineteenth of February, one thousand eight hundred and forty-nine, and shall be entitled to all the rights conferred

by all the general laws of the Commonwealth relating to railroad companies.

HENRY C. JOHNSON,
Speaker of the House of Representatives.
JOHN P. PENNEY,
Speaker of the Senate.

We do hereby certify that the bill No. 1,029, entitled "An act to incorporate the Connellsville and Southern Pennsylvania Railway Company," was presented to the governor on the twenty-ninth day of April, one thousand eight hundred and sixty-four, and was not returned within three days after the meeting of the legislature in extra session; wherefore it has, agreeably to the constitution of this Commonwealth, become a law in like manner as if it had been signed.

ADIN W. BENEDICT,
Clerk of the House of Representatives.
GEO. W. HAMERSLY,
Clerk of the Senate.

Harrisburg, August 19, 1864.

248 AN ACT relating to the Connellsville and Southern Pennsylvania Railway Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That the Pittsburg, Fort Wayne, and Chicago Railway Company, the Cleveland and Pittsburg Railroad Company, the Western Transportation Company, the Cumberland Valley Railroad Company, or either of them, are authorized to subscribe to and hold capital stock in the Connellsville and Southern Pennsylvania Railway Company; and the said railroad companies, and any other railway company or companies, east of the Susquehanna river, and also the city of Baltimore, are hereby authorized to purchase any of the bonds which may be issued by said Connellsville and Southern Pennsylvania Railway Company, or indorse, by guarantee or otherwise, any of the bonds issued by said company; such subscriptions to the stock, purchase of the bonds, or indorsements thereof by said railroad companies, or either of them, to be made upon such terms and conditions as may be agreed upon by the board of directors of the Connellsville and Southern Pennsylvania Railway Company, and the board of directors of the railroad corporations making such subscriptions, purchase, or indorsements; and the directors of the Connellsville and Southern Pennsylvania Railway Company are hereby authorized, if they deem it expedient, to pay six per cent. interest upon stock subscrip-

tions paid in during the construction of the road, and charge the amount so paid to the cost of construction.

SECTION 2. That the Connellsville and Southern Pennsylvania Railway Company shall have the right and authority to purchase or lease any or all of the property, real and personal, and all of the works, finished and unfinished, of the Pittsburg and Connellsville Railroad Company, and all the franchises, rights, and privileges of said company; and the Pittsburg and Connellsville Railroad Company shall have the right to lease or sell the same upon such terms as may be agreed upon by the boards of directors of the two companies: *Provided*, That no contract of lease or sale shall be binding upon the parties until agreed to by a majority of the stockholders of each of the corporations present at a meeting con-
249 vened for the purpose of considering the same, after twenty days' notice in at least two daily papers in the city of Pittsburg.

HENRY C. JOHNSON,
Speaker of the House of Representatives.
JOHN P. PENNEY,
Speaker of the Senate.

We do hereby certify that the bill No. 1,282, entitled "An act relating to the Connellsville and Southern Pennsylvania Railway Company," was presented to the governor on the twenty-ninth day of April, one thousand eight hundred and sixty-four, and was not returned within three days after the meeting of the legislature in extra session; wherefore it has, agreeably to the constitution of this Commonwealth, become a law in like manner as if it had signed.

ADIN W. BENEDICT,
Clerk of the House of Representatives.
GEO. W. HAMERSLY,
Clerk of the Senate.

Harrisburg, August 19, 1864.

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(Here follows map, page 251.)

252 *Officers and directors of the Pittsburgh and Connellsville Railroad Company.*

Officers: President, William Larimer, jr., city of Pittsburgh; secretary, Thomas Bakewell, city of Pittsburgh; treasurer, William B. Curry, city of Pittsburgh; chief engineer, Oliver W. Barnes, city of Pittsburgh.

Directors: William Larimer, jr., city of Pittsburgh; Thomas Scott, city of Pittsburgh; Hugh D. King, city of Pittsburgh; Benjamin F. Jones, city of Pittsburgh; Walter Bryant, city of Pittsburgh; Thomas

Nº 413. Page 251.

PITTSBURGH & CONNELLSVILLE RAIL ROAD WITH ITS CONNECTING LINES AND TRIBUTARIES.

FROM PITTSBURGH, PA. TO CUMBERLAND, MD.

tions paid in during the construction of the road, and charge the amount so paid to the cost of construction.

SECTION 2. That the Connellsville and Southern Pennsylvania Railway Company shall have the right and authority to purchase or lease any or all of the property, real and personal, and all of the works, finished and unfinished, of the Pittsburg and Connellsville Railroad Company, and all the franchises, rights, and privileges of said company; and the Pittsburg and Connellsville Railroad Company shall have the right to lease or sell the same upon such terms as may be agreed upon by the boards of directors of the two companies: *Provided*, That no contract of lease or sale shall be binding upon the parties until agreed to by a majority of the stockholders of each of the corporations present at a meeting con-
249 vened for the purpose of considering the same, after twenty days' notice in at least two daily papers in the city of Pittsburg.

HENRY C. JOHNSON,
Speaker of the House of Representatives.
JOHN P. PENNEY,
Speaker of the Senate.

We do hereby certify that the bill No. 1,282, entitled "An act relating to the Connellsville and Southern Pennsylvania Railway Company," was presented to the governor on the twenty-ninth day of April, one thousand eight hundred and sixty-four, and was not returned within three days after the meeting of the legislature in extra session; wherefore it has, agreeably to the constitution of this Commonwealth, become a law in like manner as if it had signed.

ADIN W. BENEDICT,
Clerk of the House of Representatives.
GEO. W. HAMERSLY,
Clerk of the Senate.

Harrisburg, August 19, 1864.

250

(Here follows map, page 251.)

252 *Officers and directors of the Pittsburgh and Connellsville Railroad Company.*

Officers: President, William Larimer, jr., city of Pittsburgh; secretary, Thomas Bakewell, city of Pittsburgh; treasurer, William B. Curry, city of Pittsburgh; chief engineer, Oliver W. Barnes, city of Pittsburgh.

Directors: William Larimer, jr., city of Pittsburgh; Thomas Scott, city of Pittsburgh; Hugh D. King, city of Pittsburgh; Benjamin F. Jones, city of Pittsburgh; Walter Bryant, city of Pittsburgh; Thomas

Bakewell, city of Pittsburgh; Columbus O'Donnell, city of Baltimore; Henry S. Garret, city of Baltimore; Michael P. O'Hern, city of Baltimore; Cyrus P. Markle, Westmoreland county; Daniel R. Davidson, Fayette county; Peter Meyers, Somerset county.

253 *Annual report for the year* 1853 *of the president and directors.*

OFFICE OF THE PITTSBURGH AND CONNELLSVILLE R. R. Co.,
Pittsburgh, December 5, 1853.

To the stockholders of the Pittsburgh and Connellsville Railroad Company:

GENTLEMEN: The annual meeting of the stockholders of the Pittsburgh and Connellsville Railroad Company, under the provisions of the 4th section of its charter, occurs on the 1st Monday of December, at which time the directors of the preceding year are required, by the 7th section of that instrument, to exhibit to the stockholders "a complete statement of the affairs and proceedings of the company for that year."

The discharge of this duty by the present directors of the company is important, not only as a compliance with the requirement of the charter, but eminently so in view of the fact, that the year during which they have exercised the important trust confided to them embraces the most interesting period of its corporate existence. A retrospect of its earlier history, by way of comparison with its present condition, may not be inappropriate at this time, affording, as it does, cause of congratulation at the signal triumph which the perseverance of friends and the intrinsic merit of their great pro-
254 jected work has achieved over the prejudices, jealousies, and conflicting interests arrayed against it.

Amidst the difficulties and delays attending the primary organization of the company, the construction of the road was not commenced within the time specified by law, and the original act of incorporation, passed on the 3d day of April, 1837, was permitted to expire by its own limitation. The revival of the original act, however, by the act of April 18, 1843, infused fresh hope and energy among the friends of the road, and incited the company to renewed effort. The autumn of 1846 was signalized by the appointment of an engineer-in-chief, the organization of engineering parties, the procuring of the necessary apparatus and instruments for their equipment, with instructions to the engineer-in-chief "to adopt such measures as, in his judgment, would enable him to prepare the road for contract at the earliest period." Surveys and locations of a portion of the route followed, and, on the 28th day of December, 1847, the construction of the road was commenced under contracts, entered into by the company with an experienced contractor, Mr. James Fenlon, for the grading, masonry, &c., of four miles of said railroad above M'Keesport, on the Youghiogheny river, and also from Connellsville along the valley of the Youghiogheny eastwardly towards the Maryland line. After a considerable amount of labor had been done on these sections, causes with which you are all familiar occurring to retard its

progress, it was deemed advisable for the time being to suspend the further prosecution of the work, and active operations were not resumed until within the present year.

It was obvious from the experience of the company, up to this period of its history, that additional legislation was indispensable to the successful prosecution of the work; and accordingly, on application to the legislature, at its last session, several supplements to pre-
255 vious acts, liberal in their provisions, and supplying all further requirements, were promptly passed by the general assembly, and, in due time afterwards, approved and ratified, at a meeting of the stockholders, by a unanimous vote, as part of the charter of the company. By this supplemental legislation, authority was given the cities of Pittsburgh and Allegheny, and the boroughs of West Newton and Connellsville, in addition to the counties previously authorized, to subscribe to the stock of the company; authority was also granted to the company "to extend their road to any point they might select in Somerset or Bedford counties so as to form a connection with the Chambersburg and Allegheny railroad or any other railroad that may be constructed;" and so much of the act of incorporation as limited the route of the road to the course of the Monongahela and Youghiogheny rivers, was repealed.

An act incorporating the Pittsburgh and Connellsville Railroad Company, in the State of Maryland, was also passed at the last session of the general assembly of that State, by which connections were secured, on liberal terms, through its territory, with the Baltimore and Ohio railroad, and the Chesapeake and Ohio canal, at the town of Cumberland; and, through either or both these improvements, with the tide-water of the Atlantic.

A charter having thus been granted by both States, whose territory would have to be traversed to reach the sea-board, and full authority of law awarded to every county, city, and borough, interested in the construction of the road, to contribute to its financial department, and all restrictions confining the company to particular routes, untried locations, and predetermined termini, having been removed, the auspicious day, for which its friends had long been waiting, seemed to have at length dawned upon the enterprise.

The county of Allegheny and the city of Pittsburgh promptly
256 and liberally responded to the appeal made to them in behalf of this truly Pittsburgh road, which, when completed, it is firmly believed, will yield larger profits to its stockholders, and promote, in a greater degree, the prosperity of Allegheny county and of western Pennsylvania, than any other similar improvement to which they could extend their aid. The city councils, in making the subscription to the stock of this company, may have been influenced by this consideration, as the city investment in this road exceeds her investment in any other. Her bonds, amounting to $500,000, in payment of her subscription, have all been received from his honor, the mayor; and those of the county, amounting to $750,000, have likewise been paid over by the county commissioners. The number of signatures required to the bonds and coupons attached imposed a

serious labor on both the city and county officers, and great credit is due those worthy gentlemen for the promptness, patience, and perseverance with which they discharged this onerous duty.

The liberal subscriptions at various points on the route, upon which instalments have been promptly paid when called for, has enabled the board to prosecute the preliminary work, and meet the exigencies of the last few months without the necessity of urging the negotiation of any of the city or county bonds.

The late stringency in the eastern stock markets rendered it politic, as well as desirable, to withhold them, especially when the financial condition of the company did not absolutely demand their sale; complete arrangements, however, have been made for their negotiation whenever the eastern money market, now steadily and rapidly improving, shall have reached a point that will offer such conditions as it would be advisable and proper to accept. The great advantage of individual and other subscriptions, not intended to be negotiated,
but on which payments as required can be promptly made and
257 relied upon, is thus illustrated in the alternative it provides
the company against a fluctuating market, enabling it to take advantage of its tide, and to avoid its ebb; and when the inducements which this company offers to capitalists are considered, the universally-admitted high character of their road as one of the great and valuable public improvements of the age, as the shortest, the most direct and safest route for travel, and the best adapted for freight transit between the Ohio and Mississippi valleys and the waters of the Atlantic, demonstrating it to be an investment worthy their fullest confidence, the board is convinced that nothing more can be required than a reasonable amount of effort and attention on the part of the committees appointed for this purpose to swell this description of stock subscription to any desirable amount.

The subscriptions to the capital stock of the company to this date, including corporations and individuals, amount to $1,830,100. As soon as this amount shall have been increased to $2,000,000, the city of Baltimore, by her councils, has agreed to guarantee $1,000,000 of the six per cent. bonds of the company.

The guarantee of the city councils of Baltimore, in prompt response to the authority granted them by the general assembly of Maryland, of the bonds of this company to the amount of one million of dollars, indicates very clearly the high estimation in which our road is held at its eastern terminus.

The application of the Baltimore and Ohio Railroad Company, now pending before the Baltimore councils, for the city guarantee of five millions of dollars, will, if granted, enable that company to furnish the eastern division of their road with a double track, and thus make most ample provision for the receipt and transportation of the immense increase of business they anticipate on that end of their road from the connection of the Pittsburgh and Connellsville railroad at
Cumberland. This prospect of accession to their trade and
258 business from our connection at Cumberland is set forth as
one of the reasons of their present application to councils.

In the organization of the engineer corps, a most efficient officer has been selected, in the person of Oliver W. Barnes, esq., as engineer-in-chief, a gentleman of much experience in his profession, sound in practice as well as theory, and who has bestowed upon the prosecution of the duties of his appointment untiring industry and vigilance. The success which has attended his reconnoissances, surveys, and preliminary locations of the various routes at present under advisement, is only equalled by the remarkably brief period in which this important business has been performed.

The views of the chief engineer relative to the heavy sections of the road, the postponement of their immediate letting to contractors, as has been contemplated, and the inexpediency of any present provision for the various branch-road projects which had been submitted to his consideration, together with all other subjects properly connected with the engineering department, will be fully communicated in his report to this meeting. It is sufficient for the board to say, that they most fully concur in opinion with the chief engineer on all these points, and are convinced that the propriety and correctness of his views will be made equally manifest to the stockholders.

The importance of negotiating settlements of the right of way in advance of the final location of the route, or of contracts for the work, suggested the appointment of a commissioner for this purpose, and, at their meeting in July last, Alexander L. Russell, esq., was unanimously chosen by the board to take charge of this department, who immediately entered upon the business of his appointment and traversed the intermediate territory on the line of the road between this city and the town of Cumberland.

The landholders along the various routes generally evinced
259 their appreciation of the importance and advantage of this improvement, by executing free releases through their property of the quanity of land required for the purposes of the road. Occasionally, however, an exception would occur, where the property holder conceived himself entitled to damages for the privilege of enjoying no greater benefits from the road than his neighbor, whose property it did not touch. In such cases the damages can readily be determined by juries of assessment, sworn to take into consideration the advantages also.

In the immediate vicinity of this city, however, progress in this department has necessarily been retarded by claims for damages in amounts beyond what it is believed a fair and impartial estimate by a properly constituted jury would award. In quite a number of cases the preliminary steps have therefore been taken to submit the question to the proper tribunal, under the provisions of the 10th section of the charter. The settlement of these cases will be urged as vigorously as practicable, as the amount of land damages will constitute a consideration entering largely into the determination of the final location of the route.

Depot grounds of ample capacity have been secured in the most suitable and convenient location the city affords. They consist of two contiguous pieces of ground, known as the property of Thomas

Bakewell, esq., and Mrs. Sarah B. Fetterman, situate in the second ward of the city, between Brackenridge street and low-water mark of the Monongahela river, and extending in length along said river six hundred feet. The company has been exceedingly fortunate in securing this desirable property for depot purposes, and on favorable terms. The amounts paid are, severally, eighty thousand dollars for the property of Mr. Bakewell, and fifty-seven thousand one hundred and forty-three dollars for that of Mrs. Fetterman. On the first purchase the sum of $10,000 of the consideration, and on the last
260 the sum of $6,000, is payable in the stock of the company, and the balance, on each purchase, in time payments.

In the month of July last the board was deprived of the valuable counsel and experience of two of their number, by resignation: Henry Blackstone, esq., and Dr. E. D. Gazzam. The loss of these gentlemen is deeply regretted; the former, however, is still connected with the service, having received the unanimous appointment of a principal assistant engineer. Of the latter gentleman we can confidently say that his interest in this great enterprise is as unabated as when, in the capacity of a director, his energy and zeal so largely contributed to promote its success, and the permanent organization of the company. Whether counseling with its friends at home, in devising ways and means to advance its interests, or co-operating with the president of the company before the legislature of a sister State, in procuring important legislation for the road, the board cannot omit an acknowledgment of its deep sense of obligation, or the expression of its regret that any considerations should have induced the withdrawal of so useful a member of its body.

The Ohio and Pennsylvania railroad is now completed and in full tide of successful operation, realizing the most sanguine hopes and anticipations of the sagacious and enterprising gentlemen who projected it. This great road, and its various branches and connections, with numerous other important railroads having their course towards this city, from the northwest, west, and southwest, together with the immense trade of the western rivers, must necessarily swell the business of the city of Pittsburgh, now the great distributing point of western trade and travel, to such a degree as to task to their utmost capacity all outlets to the eastern market.

The large proportion of this heavy trade which must necessarily pass over the Pittsburgh and Connellsville railroad, (also destined
261 by its locality to become the great mail route for the entire west and southwest from the seat of the national government,) creates a necessity for its early completion, as an additional communicating route between the sea-board and the west, demanded by the rapidly accumulating business and general progress of the age.

The board would, therefore, congratulate the stockholders on the present condition and prospects of the great enterprise in which they are embarked. That it will be successfully prosecuted to speedy completion, the most satisfactory assurance is afforded by the spirit manifested by all interested in the work. We have a route of commanding importance, combining natural advantages in locality, unap-

proached and unapproachable by any other for railroad communication between the east and the west; shorter in distance, superior in grade and curvature, and consequently admitting of the highest degree of speed with the greatest degree of safety; it traverses and develops, throughout its entire course, a coal and iron region, exhaustless in the quantity and unsurpassed in the quality of its minerals, abounding in every variety of valuable timber, and affording water power sufficient to operate mills and machinery to any extent. Such is a brief synopis of the general characteristics of the route over which we propose to construct our road; a route which will certainly furnish an immense local trade, liberally remunerating the company; a route which, in the language of one whose intimate knowledge of the country entitles him to be quoted, "is pointed out by the great hand of nature, and presents no formidable obstacle to the construction of a road, from its inception to its terminus."

The report of the treasurer is hereunto annexed.

By order of the board of directors.

WM. LARIMER, JR., *President.*

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263 *Treasurer's report, Pittsburgh and Connellsville Railroad Co.*

OFFICE PITTSBURGH AND CONNELLSVILLE RAILROAD CO., *Pittsburgh, December* 3, 1853.

	DR.
Amount received in payment of instalments	$26,380 00
	26,380 00

	CR.
By amount expended for engineering to Dec. 1, 1852...	$5,604 93
Graduation, to Dec. 1, 1852.....	325 27
Expenses, " 1, 1852.....	3,754 27
Engineering from Dec. 1, 1852, to Dec. 1, 1853.....	13,339 09
Land damages, from Dec. 1, 1852, to Dec. 1, 1853..	448 00
Expenses, from Dec. 1, 1852, to Dec. 1, 1853.....	1,414 19
	24,885 75
Treasurer and agents	1,494 25
	26,380 00

W. B. CURRY,
Treas. P. & C. R. R.

264 ENGINEER'S DEPARTMENT,
PITTSBURGH AND CONNELLSVILLE RAILROAD COMPANY,
Pittsburgh, December 1, 1853.

To the directors of the Pittsburgh and Connellsville Railroad Company:

GENTLEMEN: I have the honor of submitting the following report of the operations of this department since it has been under my charge, now between four and five months.

After a full examination of the maps, and the results of previous surveys in your possession, and from my own knowledge of the ground over which you are authorized by your charter, and its supplements, from the States of Pennsylvania and Maryland, to make a railroad from Pittsburgh to a point at or near Connellsville, and thence to Cumberland, Md., there to connect with the Baltimore and Ohio railroad, I deemed it practicable to make an instrumental survey of the whole route, and a location of a large portion of it, before the close of the present season. It was necessary to do this, in order to enable you to put the heavier sections and such divisions of the road under contract this winter, or early next spring, as it might be deemed expedient to start in advance of the lighter work, requiring less time to complete it.

Five parties of engineers were organized for these surveys, the first of which took the field on the 20th of July, at the summit of the Allegheny mountains, near the Sand Patch, to run eastwardly down Wills creek. A second party soon after commenced near Meyers' Mills, to run westwardly down Flaugherty creek and Castleman's river. A third at Pittsburgh, to run up the Monongahela and Youghiogheny rivers to West Newton. A fourth at West Newton,
to run eastwardly to Connellsville, and a fifth at Connellsville,
265 to run eastwardly up the Youghiogheny to the mouth of Castleman's river. About the middle of September the fourth party was transferred to Cumberland, to run westwardly up Wills creek, to meet the party coming east from the summit. Owing to the heavy timber on Wills creek, the rough nature of the ground, and the difficulty of getting quarters for the party near their work, their progress was slow. These parties have pressed forward with very commendable perseverance, and have just completed about one hundred miles of locations, including a full location of the line from the Sand Patch summit to Cumberland. They will be disbanded in the course of the next ten days, only a small portion of each being retained during the winter, to make up the estimates, maps, &c., of the various lines. In view of the present unsettled state of the negotiations for the right of way for the first sixteen miles along the Monongahela river, it is deemed inexpedient to discuss in this report the relative merits of the lines we have surveyed from the city to a point some distance below Connellsville, on the Youghiogheny river, where they reconnect. From this point to near Cumberland, no serious difficulty will exist about land damages; indeed, for nearly the whole of this distance our active and energetic commissioner, A. L. Russell, esq., has obtained free releases of the right of way from the

land owners. By the time the cost of the right of way on either side of the Monongahela has been ascertained, our estimates will be fully prepared, the relative merits of the different lines collated, and made the subject of a future report. In the present one, only a general description of them will be given.

In determining the proper starting point at this city for our road, and in view of the character and amount of the business likely to be attracted to it, it was of the first importance that it should be established where sufficient ground could be obtained, at moderate
266 cost, for an extensive depot; that it should be on the bank or levee of the Monongahela river, where freight and passengers could be transferred from steamboats to our cars, and vice versa, with the least possible delay and expense; that it should be at a point where a facile connection could be made with any or all of the railroads leading into the city of Pittsburgh, and at the same time afford us the choice of the routes it was my intention to examine. All these requirements were found to be admirably combined in two large lots of ground, adjacent to each other, owned by Mrs. Fetterman and Thomas Bakewell, esq., bounded on the west by the Monongahela levee, on the north by Brackenridge street, on the south by Try street, having a front of six hundred feet on the Monongahela river, containing over three acres of ground available for depot and wharf purposes. It is a source of gratification that so eligible and valuable a plot of ground should have been obtained upon terms so advantageous for the company. Before making a decision upon the route from the city, it will be proper for you to secure suitable ground, which I have already ascertained can be had on either line, for an outer depot, where repair shops, car houses, &c., can be erected, and sidings laid for making up trains.

The first of the routes leading from the city was commenced at the eastern end of the depot ground described above, at Try street, near the Monongahela outlet lock of the Pennsylvania canal; crossing this lock the line follows the north or left bank of the Monongahela river, passing through the lower part of the grounds owned by the Pittsburgh Gas Company, without interfering with any of their buildings; thence through lots of the Kensington rolling mill, William Eichbaum, and others, crossing the Braddock's field plank road at Nicholson & Payne's foundry, with a sufficient height of grade to enable us to bridge over it cheaply; thence following the side hills above the plank road until we recross it a short distance beyond Four-
267 Mile run, and follow the flat ground on the right of the plank road, passing through Tullymet and Rosscommon to a short distance beyond the Glen Hotel, where we are again compelled to cross the plank road to the side hills above it; thence following these side hills for some distance, we recross the plank road to the flats of Braddock's fields; passing these with a straight line nearly three miles in length, we cross Turtle creek, at a favorable place for bridging, to the village of Perrysport; thence following the gentle slopes from here to M'Keesport, we pass with a curve of large radius through the upper part of this important and thriving town into the

valley of the Youghiogheny river, which here unites with the Monongahela river. Leaving the Monongahela to the right, we follow the north or left bank of the Youghiogheny, passing Elrod's Ferry, several small settlements, numerous coal mines, and crossing the line of the Hempfield railroad, near the mouth of Sewickly creek; thence to the borough of West Newton, situated on an elevated flat at a point where an important turnpike and plank road crosses the river on a substantial bridge, enabling the trade of a large and well developed section of Washington and Westmoreland counties to reach our road with great facility, if this route should be adopted; the concentration of this trade at West Newton must make it a busy and prosperous town.

Passing through West Newton with a favorable line, we still follow the north bank of the river, passing vast beds of Youghiogheny coal, lying in veins from seven to fourteen feet in thickness, near to Perryopolis and East Liberty to Connellsville and New Haven, important towns on either side of the river, whose united population is over 2,000. Here are several saw mills and grist mills, a large woollen factory, other small manufacturing establishments, and extensive tanneries. A short distance south of Connellsville is Union fur-
268 nace, on Dunbar creek, now in full blast, making a large amount of excellent iron; other furnaces only await the completion of our road to commence operations. Several important roads concentrate at Connellsville, and vast droves of cattle pass over the bridge and fording here on their way to an eastern market. Some idea of the importance of this trade may be inferred from the fact that last year 70,188 head of cattle, 208,733 head of sheep, 1,117 head of horses, 3,552 head of mules, 6,858 head of hogs; making a total of 290,448 head of live stock which passed over this bridge, whilst more than an equal number passed by the fording. The number will probably be much greater this year. Through Connellsville we pass along the river street, doing no damage to any property, on to the gap made by the Youghiogheny through the Chestnut ridge, Laurel hill, and Briery mountain, along favorable side hills and occasional flats, passing the celebrated marble and brown sandstone quarries to Ohio Pile Falls, a beautiful fall of thirty feet, affording a vast water power, in an admirable position for its application to manufacturing purposes.

A small settlement has already been commenced at Ohio Pile Falls, which must become a very important town when our road is made, affording it an outlet. The river makes a long horse-shoe bend here, which we cut off by a short through cut, saving considerable distance and much curvature encountered on a line on the south side around the bend. From Ohio Pile Falls the line still follows the northern side hill of the Youghiogheny and occasional flats to Turkey-Foot, at the mouth of Castleman's river, which is a large tributary of the Youghiogheny; leaving the latter stream, which flows south,
269 and turning to the left, up Castleman's river, we encounter no serious obstacle until we reach Pinkerton's bend, where,

in order to save some two miles of distance and much curvature, we are compelled to make a tunnel some 500 yards in length.

Near the mouth of Castleman's river it is practicable, by tunneling under the Hog Back ridge for about 600 yards, between Laurel run and Castleman's river, to save three miles of distance.

From Pinkerton's bend we pass over very favorable ground, crossing Cox's creek to a point a short distance below Meyer's Mills, where it is necessary to commence the grade of fifty feet per mile.

From our depot in the city of Pittsburgh, to this point, about one hundred and twelve miles, if the route above described should be adopted, there need be no grade exceeding twenty-six feet per mile; for more than two-thirds of this distance the grades need not exceed sixteen feet per mile, with long distances of level, and there need be no ascending grade going west in the direction of the vast coal and timber trade which will be tributary to this part of our line.

The whole line will be easy of construction, and free from the necessity of long wooden bridges or other objectionable and perishable structures. It will afford, at some future day, when it shall be expedient for the company to construct them, easy connections by branches with Uniontown, by a line diverging from our main line near Connellsville, and with the town of Somerset, by a line up Cox's creek, probably not exceeding eight miles in length, with an easy gradient. From the commencement of the grade of fifty feet below Meyer's Mills we follow the gentle slopes of Flaugherty creek (a tributary of Castleman's river) for five and a half miles to the west end of our proposed tunnel of 4,100 feet. by which we pass the Allegheny mountain under the natural summit of the Sand
270 Patch, from which we descend on the eastern side down the valley of Wills creek, with a grade of sixty-six feet per mile on straight lines, softened on curves in proportion to the rate of curvature, until we reach the flats below the mouth of Little Wills creek, from which we have a very favorable line to a point below Gladden's run, some five miles above Cumberland; thence we have located two lines to connect with the Baltimore and Ohio railroad, one following the right and the other the left bank of Wills creek, passing through a remarkable gap called the Narrows.

The line on the right or south bank has great advantages in cost, but a comparison of their merits in other respects will have to be made before a correct decision can be arrived at as to which is the better line.

Before commencing the location from the Sand Patch, a crest line of the Allegheny mountains was traced from Deter's gap on the north to Davis's gap on the south, near the National road, in the State of Maryland, a distance of twenty-five miles.

This crestline shows conclusively that the Sand Patch summit is not only the lowest within the scope of our route, but, admitting as it does the greatest reduction by a moderate length of tunnel, is in all respects the best.

Lines were tried over four other summits south of the Sand Patch, at one of which it would be quite practicable, by following Flaugh-

erty creek higher up, to pass the mountain into the valley of Wills creek, by a thorough cut of 90 feet. This line would, however, elongate our route some seven miles, and increase the rise and fall very materially; it was therefore abandoned, and the location from the Sand Patch summit commenced in both directions.

By adopting at this summit a greater reduction and an increased length of 1,400 feet, making our tunnel 4,100 feet in length on
271 a straight line nearly two miles long, we are enabled to avoid the long detour at Scaffold Camp hollow, and curves of 400 feet radius, admitted on the location for the Baltimore and Ohio railroad in 1839. We are also enabled to take advantage of better ground on the northern side hill with a southern exposure, affording a line of easy curvature and less rugged profile, saving more than four miles of distance between the summit and Cumberland.

A line by the way of Flaugherty creek passing the mountain at the head of Laurel run, a tributary of Wills creek, was traced, but found to be unfavorable.

We made no instrumental examinations on Jenning's run, (into which we could have passed from Laurel run, by a tunnel two-thirds of a mile in length, and obtained a shorter line by about five miles between Meyer's Mills and Cumberland, than our location by Wills creek,) for the reason that we would have encountered much greater summit elevation, and would have been compelled to make use of the steeper gradient of ninety-five feet per mile, instead of the low summit at the Sand Patch, the gentle gradient of sixty-six feet per mile, and the admirable line afforded by the valley of Wills creek, besides the decisive advantage in favor of the Wills creek route, that it enables us at some future day to connect at the mouth of Little Wills creek with a branch some twenty miles in length, over favorable ground, to Bedford and Bedford Springs, which may be extended, under the charter to the Chambersburg and Allegheny Railroad Company, to Chambersburg, and there connect with a railroad leading to Philadelphia.

This route would pass through the southern tier of counties, some of the best in the State, and near to the celebrated Broad Top coal basin. Its importance has already engaged the serious attention of enterprising and influential gentlemen in Philadelphia and
272 along the route. As (when our road is completed) but a short link will complete so important a connection, it is not improbable that it will be made at a period not far distant.

The second route examined from the city of Pittsburgh to a point on the Youghiogheny river, some distance below Connellsville, was commenced by crossing the Monongahela river from our depot ground to Birmingham; thence following the side hills to Street's run and that valley for about four miles we pass over a summit into Lewis' run and descend into the valley of Peters' creek, which we follow to the Monongahela, near West Elizabeth; thence following the flats and side hills of the river to Little Redstone creek, near Cookstown, we follow it to the high ground near Perryoplis, from which we descend into the valley of the Youghiogheny, grading down Washington's

run and the southern side hills of the river until we connect with the Youghiogheny line below Connellsville.

Another route diverging from this, opposite West Elizabeth, ascending Fallen Timber run to a depression at the head of Pierce's run, crosses this depression and descends into the valley of the Youghiogheny and connects with the first line below West Newton; this forms the shortest route examined. It is susceptible of much improvement, and before adopting a line further examinations should be made upon it. Efforts are now being made along it to obtain a large conditional subscription; should they meet with success, the vast local trade which the Monongahela route promises to a railroad through that region, the extensive coal beds which would be afforded an outlet, considered apart from the engineering merits of the line, entitle it to serious consideration.

Various lines, to save distance, were tried, not only upon the Monongahela but upon the route along the Youghiogheny, several of which are to be further examined early next spring; a report upon them hereafter, I trust, will enable us to show a considerable shortening of the line.

273 The principle upon which these lines, to save distance, will be examined is that to shorten our route one mile will be considered equivalent to the saving of $50,000.

The gauge of our road will be four feet eight and a half inches, the same as the Baltimore and Ohio railroad, the Steubenville railroad, the Pennsylvania railroad, and the Hempfield railroad, connections with all of which are practicable from our line.

The width of the road will be the same as upon the Pennsylvania railroad, and the road superstructure an improvement upon the best now in use.

In view of the time it will take to complete the tunnel at the summit of the Allegheny mountains economically, I would urge that arrangements be made for putting it under contract during the present winter. In the hands of skilful contractors it will take but little over two years to finish it; but should it be given to parties unaccustomed to work of such magnitude and peculiar difficulty it may be a much longer time before it will be done.

Certain portions of the line between the city and Connellsville should be put under contract early next spring, and may be completed within one year from the period of commencement. In order to enable us to press forward our work with vigor during the coming year additional individual subscriptions should be procured. I urge upon the board the expediency of making an effort at this time to enlarge their amount.

The citizens of Pittsburgh, considering the importance of this work to them, should make more liberal individual subscriptions. Although nature has made the position now occupied by this city at the most eastern point on the Ohio river, and at the head of its navigation, a commanding one, still her destiny and future importance will depend not so much upon her old natural advantages as upon her new channels of communication, which, whilst they connect her with the cities

of the seaboard, the great west, and the shores of the lakes,
274 will also penetrate and disgorge the vast stores of minerals comparatively valueless where they now lie, but transported to her manufacturers and merchants become wealth.

On either side of the line of the Connellsville railroad there is scarcely a foot that does not contain coal, iron, or limestone, and frequently all these in juxtaposition with inexhaustible water power, affording great advantages for the manufacture of iron. Extensive forests of rare timber only await the opening of our road to fall before the woodman's axe and be quickly transported to a market.

A due appreciation of the importance of our road, of the immense local and through trade in freight and passengers inevitably tributary to it, its moderate cost per mile, its low grades, and the abundance of cheap fuel throughout its entire length, must satisfy all that it will be able to pay large dividends to the stockholders.

By the time our road is completed the Ohio and Pennsylvania, the Steubenville, and the Allegheny Valley railroads, whose routes and connections in every direction have been so ably presented to public notice in the several reports by the officers of those companies, will be in full tide of successful operation. They, and the steadily increasing business of the Ohio, Monongahela, and Allegheny rivers, will pour into this city their confluent streams of trade in such a vast flood that the Pennsylvania railroad, crowded with the local trade in coal, iron, timber, &c., she will be enabled to encourage and develop when her double track is completed, together with the western tonnage destined for Philadelphia, will have no inducement to compete with the Connellsville railroad for trade destined to Baltimore, which, by our shorter and vastly superior route to that city, we will be enabled to carry at rates amply remunerating to us, but too low to justify them in competing with us for it.

275 The Chesapeake and Ohio Canal Company not having availed themselves of the ground left for them at the time the Baltimore and Ohio railroad surveys were made, we have been enabled to make great improvements in the line in detail by availing ourselves of it; and by these improvements, and others elsewhere alluded to, we will reduce the distance to Cumberland to about 147 miles; this, added to the distance from Cumberland to Baltimore, 178 miles, makes the total distance from Pittsburgh to Baltimore 325 miles. Without exceeding the average speed at which express trains are run on roads which are not so favorable for high speed as ours will be, passengers can be carried from Pittsburgh to Baltimore in ten hours. This would be at a speed of 32½ miles per hour, including stoppages. The Baltimore and Ohio railroad will probably have a double track from Cumberland to Baltimore by the time our road is completed; there need then be no difficulty in running a train at that speed on their road.

Should the Metropolitan railroad be extended from Washington to Harper's Ferry passengers can be carried from Pittsburgh to the seat of government in about nine hours. It is a remarkable fact that although the merits and advantages of our route across the mountains

were advocated by General Washington, and many letters and official documents were written by him on the subject nearly a century ago, and although his knowledge of the route was subsequently scientifically ascertained to be not only correct, (by the engineers of the Chesapeake and Ohio canal and the Baltimore and Ohio railroad,) but that it was in reality the best between the Atlantic ocean and Ohio river, still it has remained for the energetic and enterprising president of this company to carry out the sagacious views of the "Father of his Country."

In concluding this report it gives me pleasure to acknowl-
276 edge the valuable services of my principal assistants, Messrs. Henry Blackstone, Thomas Franklin, and M'Pherson Barnitz; also of the senior assistants, Messrs. A. D. Sweeney, J. H. Davis, A. S. M. Morgan, and other members of the corps.

All of which is respectfully submitted.

OLIVER W. BARNES,
Chief Engineer.

277

278 *Six per cent. bonds of the county of Allegheny, and the city of Pittsburgh, Penn'a, guaranteed by the Pittsburg and Connellsville Railroad Co.*

In offering for negotiation the bonds of the city of Pittsburgh and of the county of Allegheny, Pennsylvania, issued to the "Pittsburgh and Connellsville Railroad Company," in payment of their subscriptions to the capital stock of said company, the undersigned desires to submit, in the smallest practicable compass, a few facts touching the proposed investments, and the substantial character of their securities. The bonds of the city amount to $500,000, and those of the county to $750,000, for which respective sums the city and county have received stock at par. These bonds have been issued under the fullest authority of law, as will appear by reference to the acts
279 of the general assembly of Pennsylvania, hereunto annexed, and are in sums of $1,000 each, payable on the first day of July, A. D. 1883, being thirty years after date, in the city of New York, at the office of the Pittsburgh and Connellsville Railroad Company. Coupons for the interest, (six per cent.,) payable at the same place semi-annually, on the first days of January and July, are attached to the bonds. As security for the payment of principal and interest, the faith, credit, and property of the city of Pittsburgh, and of the county of Allegheny, have been solemnly pledged, indorsed by the guarantee "Pittsburgh and Connellsville Railroad Company," on the line of whose road the entire proceeds of these bonds will be expended.

The city of Pittsburgh, celebrated for her extensive iron manufactories, has been appropriately styled the "Birmingham of America." Her manufacturing and other business does not fall short of $50,000,000 annually, and is steadily increasing. Comprising the adjacent districts, her population exceeds 100,000, whose vigorous and ener-

getic character is strikingly illustrated by the fact that, within the first year afterwards, the city had more than recovered from the ravages of the memorable fire of 1845, by which property, variously estimated at from $4,000,000 to $6,000,000, was destroyed; the entire "burnt district" was, within that period, covered with buildings far more substantial and conveniently adapted to business
280 purposes; and in the rapid progress of improvement and general prosperity since, all traces of that great calamity have been entirely lost.

The balance of trade is greatly in favor of the city against all other parts of the country. She owns in her corporate capacity, wharves, landings, water works, and other real and personal property, exclusive of her railroad stocks, to the value of $1,600,000. Her railroad stocks amount, in the aggregate, to $1,350,000. The city valuation for taxation purposes is over $10,000,000, and her revenue from taxation, water rents, wharves, &c., is not less than $155,000 per annum. Her annual exports, chiefly of iron, glass, and other manufactured articles, exceed $12,000,000, whilst, in addition, she also exports to the lower (river) markets of the Ohio and Mississippi, and by canal, eastward, from 12,000,000 to 16,000,000 bushels of coal annually; and consumes almost an equal number of bushels per year, chiefly in her manufacturing establishments. The entire debt of the city, exclusive of railroad bonds, is $1,145,707. The railroad stocks above referred to are in the following important improvements, viz:

Ohio and Pennsylvania railroad	$200,000
Pittsburgh and Steubenville railroad	250,000
Allegheny Valley railroad	400,000
Pittsburgh and Connellsville railroad	500,000
	1,350,000

281 No one doubts that the stock of each of these companies will be par, or nearly so, immediately on completion of its road; the first named road is already finished, and her stock at par; the second and third and under contract and the work progressing rapidly. The last named will be let to contractors during the present winter or early ensuing spring, the necessary reconnoissance, surveys, and preliminary locations having been nearly accomplished, under the directions of its efficient and energetic engineer-in-chief, Oliver W. Barnes, esq., in the brief period of about four months.

Pittsburgh is destined by geographical position, being at the head of navigation of the western rivers, and commanding unrivalled commercial advantages, as the great western distributing point of trade and travel, to become the railroad city of the Union. She will shortly be the concentrating point of a system of railways penetrating not only every portion of the surrounding country, but connecting her with the leading cities of the Union—east and west, north and south. The most important of the various railroads now

finished, in progress of construction and contemplated, for which charters have been secured, leading from the city of Pittsburg, may be thus stated:

"Pennsylvania Central railroad," connecting Pittsburgh with Philadeladelphia ond the east.

"Ohio and Pennsylvania railroad," connecting Pittsburgh with the western and southwestern States.

290 "Allegheny Valley railroad," connecting Pittsburgh with Buffalo, Rochester, the entire State of New York, and the northern lakes.

"Cleveland and Pittsburgh railroad," connecting these two important points, the "Forest" and the "Iron" cities and with its Beaver and Wheeling extensions, in connection with the Ohio and Pennsylvania railroad to Beaver, making a river route to the west, and connecting with all the railroads in Ohio, having their course towards Pittsburgh, from the northwest, west, and southwest.

"Pittsburgh and Steubenville railroad," connecting at Steubenville, Ohio, with the "Steubenville and Indiana railroad," and forming the connecting link in the great chain of railways from Philadelphia, through Pittsburgh, Ohio, Indiana, Illinois, to Saint Louis.

"Chartiers Valley railroad," from Pittsburgh to Washington, Pennsylvania, tapping the Hempfield railroad at the latter point, and thus securing to Pittsburgh much trade and travel around and southwest of Wheeling, Va.

"Cleveland and Mahoning railroad," securing to the city of Pittsburgh the trade of the fertile region known as the "Western Reserve."

Pittsburgh and Connellsville railroad, passing through the counties of Allegheny, Westmoreland, Fayette, Somerset, and Bedford
291 to Cumberland, in the State of Maryland, and forming, with the Baltimore and Ohio railroad, a direct connection between the cities of Pittsburgh, Baltimore, and Washington, D. C., and by a proposed connection at Wills creek, fourteen miles west of Cumberland, with the projected "Chambersburgh and Allegheny railroad," through the southern tier of counties of Penn'a, by way of the celebrated "Bedford Mineral Springs," forming a direct communication also with the city of Philadelphia, and affording a choice of all the sea-board markets.

There are also, in addition, branch roads, connecting with main lines, leading to the City of Pittsburgh, viz: The Carrolton branch of the Pittsburgh and Cleveland railroad, completed. The Akron branch of the same in operation, and the Blairsville branch of the Pennsylvania railroad, also in operation.

These improvements must unquestionably and greatly to the wealth and prosperity, population and business of the city of Pittsburgh, and of the county of Allegheny, and present strong inducements to men of enterprise for the investment of capital. No city in the Union can boast a more substantial, intelligent, and industrious population, or a climate more healthful, being entirely free from the epidemics and contagious diseases common to so many of the cities of the west and southwest.

The tonnage capacity of steamboats registered at the district of the port of Pittsburgh, is exhibited in the following statement, taken from the books of the surveyor of the port, viz:

292	For the year ending on the 31st Dec., 1848	30,445
	For the year ending on the 31st Dec., 1849	35,547
	For the year ending on the 31st Dec., 1850	45,054
	For the year ending on the 31st Dec., 1851	51,524
	For the year ending on the 31st Dec., 1852	65,554
	For the year ending and up to July, 1853	70,268

being the latest period to which returns have been prepared; also the number of steamboats built and registered at Pittsburgh, viz: in 1848, was 53; in 1849, was 51; in 1850, was 54; in 1851, was 49; in 1852, was 70; and up to Nov. 10th, 1853, was 61; a number for the present year not yet being returned for registry.

The above tonnage is regulated by measurement, and not by the actual capacity of the boat, which in every case will exceed, and frequently double, the measurement tonnage.

In addition to the above, and which will amount to much more per annum, is the tonnage of barges, keel boats, trading boats, flat boats, and other craft not registered.

The number of steamboat arrivals during the year 1852, at the Monongahela wharf, in the city of Pittsburgh, was 2,505, with tonnage amounting to 395,661 tons; and at the Allegheny wharf
293 in said city during same period, 178, with tonnage 17,044 tons; making together 412,705 tons.

The county of Allegheny, Penn'a, embraces the fertile and populous region around the confluence of the Monongahela and Allegheny rivers with the Ohio, and of the Youghiogheny with the Monongahela. Her area is 754 squares miles. As an agricultural district, her soil has reached the highest state of cultivation at the hands of her thrifty and enterprising farmers; and in her extensive coal-fields, navigable rivers, water power, mills and manufactories, she stands unrivalled in all the elements of business and wealth. Her population in 1840 was 81,285, and in 1850, it was 138,290; for the last few years, however, the per centum of increase has been much greater, and it is estimated that the population of the present year will reach very nearly if not quite 200,000:

In 1849, the county valuation for taxation purposes was	$22,000,000
In 1851, the county valuation for taxation purposes was	24,000,000
In 1853, the county assessment is	26,235,030

Her agricultural products, &c., are partially stated in another place; but no attempt has been made to classify her many and various manufacturing establishments, or to enumerate the kind, quantity, and quality of their products. Her subscriptions to railroads,
294 like those of the city of Pittsburgh, have been cautiously made, with a prudent regard to their character and prospects

of paying capacity. Independent of these subscriptions, the report of the county auditors in January last, makes her indebtedness $97,039 02.

Her railroad subscriptions are:

To the Pennsylvania Central railroad	$1,000,000
To the Allegheny Valley R. R	750,000
To the Pittsburgh & Connellsville railroad	750,000
To the Pittsburgh and Steubenville railroad	300,000
To the Cleveland and Pittsburgh railroad	150,000

For which several subscriptions she holds a like amount of the capital stock of these companies.

295 The following brief exhibit of the population and agricultural character of the counties penetrated by this road has been taken from the seventh United States census, made in 1850, upon each item of which a considerable per centum of increase should now be allowed:

Counties.	No. of acres of land in farms.	Cash value of farms.	Value of live stock.	No. of bus. of grain produced.	Population.
Alleghany	384,001	$17,952,830	$1,046,543	1,962,168	138,290
Westmoreland	509,727	12,576,343	1,596 849	2,802,317	51,726
Fayette	331,540	7,369,275	782,299	1,548,316	39,111
Somerset	376,266	3,874,520	627,263	722,251	24,416
Bedford	347,561	3,962,047	515,537	803,335	23,052
Allegheny co., Md	217,272	2,519,858	270,070	388,415	22,769
Total	2,166,367	48,254,873	4,838,561	8,226,832	299,365

296 Large portions of several of the above counties are without any outlet for their produce, and have consequently been greatly retarded in progress and improvement. The construction of this great work will stimulate to more active effort in every department of industry, and, by affording facilities for transportation to a choice of markets, and for intercourse with business marts, will greatly accelerate the agricultural interests of this entire region, and at the same time create a local trade and business remunerative to the road.

The mineral wealth and financial condition of several of these counties, may also be judged from statements furnished out of the offices of the county commissioners, viz:

Westmoreland county:

Valuation for taxation purposes, $7,700,000.
County indebtedness, none.
Number of acres containing coal, 30,000.
Number of acres containing iron ore, 15,000.
Number of acres containing limestone, about 1-6 of county.
Number of acres containing timber, about ¼ of county.

500 or 600 acres contains fire-brick clay.

Laurel Hill and Chestnut Ridge constitute about one-thirtieth part of the county, most of which contains iron ore, limestone, and coal.

Fayette county:

Valuation for taxation purposes, $5,623,721.
County indebtedness, none.
297 About three-fourths of the land contains coal.
About one-half of the land contains iron ore.
About three-fourths of the land contains limestone.
Coal, iron ore, and limestone are found together.
Between one-fourth and one-half the land is timber land.

The principal business of the county is agriculture and the manufacture of iron.

Somerset county:

Area of the county, 1,050 sq. miles.
Valuation for taxation purposes, $2,759,702.
County indebtedness, none.
Am't of land containing coal, $\frac{2}{3}$ of whole area.
Am't of land containing iron ore, $\frac{2}{3}$ of whole area.
Am't of land containing limestone, $\frac{1}{2}$ of whole area.
Am't of land containing all three in juxtaposition, $\frac{1}{3}$ of whole area.
Am't of land containing timber, $\frac{2}{3}$ of whole area.
Large quantities of fire-brick clay are also found in this county.

Bedford county:

Valuation for taxation purposes, $2,316,465.
County indebtedness, 5,000.
No. of acres containing coal, 30,000.
No. of acres containing iron ore, 60,000.
No. of acres containing limestone, 90,000.
No. of acres containing all three in juxtaposition, 25,000.
298 Nearly $\frac{3}{4}$ of the county is timber land.
In the northeastern part of this county is the celebrated Broadtop Mountain coal basin.

The subscriptions to the capital stock of this company from corporations and individuals, to this date, amount to $1,830,100.

As soon as this amount is increased to two millions of dollars, the city of Baltimore, by her councils, has agreed to guarantee the six per cent. bonds of the company to the amount of one million of dollars.

From Allegheny county, Maryland, and at least two of the counties (Fayette and Somerset,) in this State through which the road will pass, the company has reason to expect additional stock subscriptions. These counties are not, at present, prepared to act; but the fullest assurance is given that they rightly appreciate the importance of this desirable improvement, and will, in due time, promptly and efficiently co-operate in consummating a work that cannot be other-

wise than highly promotive of their prosperity and comfort. Besides this, liberal bids have already been submitted by responsible individuals, experienced railroad men, jointly proposing to take stock in payment to the amount of one-fourth of the whole amount. ($4,500,000,) for which they offer to complete and equip the road. This, of itself, would swell the stock subscriptions to about $4,000,000; but,
299 in addition still, with proper effort, a very considerable amount of stock could, doubtless, be disposed of to individuals resident in the two great cities, Baltimore and Pittsburgh, properly the eastern and western terminus or the road, in the town of Cumberland, the important central point between them, in other boroughs and towns, and to citizens along the route.

The "Pittsburgh and Connellsville railroad" is an improvement of peculiar promise, both of usefulness to the public and of profit to its stockholders. Of lighter gradients, more easy curvatures, and, by many miles, shorter than any other practicable route between the western waters and the Atlantic sea-board, it cannot fail to attract the admiration and regard of the public, and secure the patronage of the business community as the safest and quickest for travel, and the most reliable for freight transit between the east and west.

Starting from its eligibly located depot grounds, lately purchased by the company, on the north bank of the Monongahela river, in the city of Pittsburgh, it follows the course of this river to the Youghiogheny, and along the waters of the Youghioghney, the Castleman and the Flaugherty, through a country abounding in mineral and agricultural wealth, valuable stone quarries and water power, affording rare facilities for mills and manufactories, reaches the "dividing ridge" of the eastern and western waters, the only mountain encountered on the route through which nature has not already generously opened a pathway. This obstacle is
300 overcome by a tunnel of about 4,000 feet, preserving the light gradients of the road, along the waters of Wills creek to the town of Cumberland; from which point the descent to the tide-water of the Atlantic, by the eastern division of the Baltimore and Ohio railway is easy. At Cumberland a connection is also made with tide-water by means of the Chesapeake and Ohio canal. It has, with much force and propriety, been styled "Nature's Route." Between the cities of Pittsburgh and Cumberland the distance is about 147 miles. The advantages of this route attracted public attention years ago, and were fully discussed and admitted; but a mistaken policy prevented its adoption and occupancy, at that time, as the first connecting link and great railroad thoroughfare between the east and the west. Time and experience, however, have not detracted from its merits, but have more clearly illustrated its importance, and conclusively demonstrated to the world its superiority over all other routes, as regards either distance, or grade and curvature. It also affords the most direct and desirable sea-board connection for the heavy produce of the west; and as a southern route, will avoid, in a great measure, if not entirely, the difficulties and delays to which more northern roads are subjected by the heavy snows of the severe and protracted winters of the Allegheny region.

At each of the termini of this road is a powerful commercial
301 city—midway of which are the famous coal fields of the Cumberland basin; from which point, both east and west, the territory, through which it will pass, abounds in mineral and agricultural wealth, exhaustless water-power, and every facility necessary to the rapid development and settlement of a region capable of sustaining an immense population.

The company has been incorporated under a charter of the most liberal character. The stock and tonnage of the road are exempt from taxation, as are also the dividends to the amount of six per cent.

The annexed extracts from letters received from gentlemen of high character and intelligence, resident at different points on the route, furnish valuable information in such detail as only an intimate knowledge of facts and the country could supply:

SOMERSET, PENNA., *Nov.* 4, 1853.

* * * * * * * *

I submit the following statistics, gleaned from the public records, private information, and actual observation. Somerset county comprises an area of 1,050 square miles, principally a bituminous mountain country: the soil being much better, however, than would be anticipated in so high a region. The southern portion of the county, lying on the Castleman river, and its tributaries, produces good crops of wheat and corn; and the middle and northern portions, hitherto noted principally as a superior grazing country, are yearly evidencing the fact, that nothing but an enlightened system of tillage is needed to make them equal the southern portion in grain growing capacity. In 1850, the population of the county was 24,000,
302 and her aggregate valuation, for tax purposes, is now assessed at $2,759,702, although it is a notorious fact that it does not amount to one-half the cash value of the lands. The county is entirely free from any indebtedness, notwithstanding the commissioners have just completed the erection of a beautiful and commodious court house. By glancing at the map you will observe that the Laurel Hill mountain forms the entire western boundary of the county, running from north to south.

On the east you will find the little Allegheny and Savage mountains running north, and within from five to seven miles of the county line. Between these two mountains and the Great Allegheny, which lies a few miles west of them, towards the centre of the county, extends a narrow belt of land, the only portion of the county that does not contain coal. Between the Laurel Hill, on the west, and the Great Allegheny, comprising a vast proportion of the area of the county, is one entire and continuous coal basin. Between that and the Savage, and Little Allegheny, there is no coal; but at the base of the latter commences the Cumberland coal field or basin, which is five miles wide in this county. The Castleman river runs west through these basins their entire width, and in its valley the veins vary from three to fourteen feet in thickness, according as they outcrop high or low on the face of the hills. Between all these strata of coal are found beds of iron ore and limestone, through the entire

width of the county on the Castleman river. In the northern part of the county, in Shade and Jenner townships, are furnaces, at which a fine quality of iron has been made, although the necessary material is not found there in such superabundance as on the Castleman river. In brief, I know of no square mile in the county in which iron ore cannot be readily found, also, limestone in every portion of it. I may, therefore, safely estimate that two-thirds of the whole area of the county contains coal—two thirds iron ore—one-half lime-
303 stone; and that fully one-third contains all three in juxtaposition. From the western boundary of the county, up the Castleman, is a heavily timbered country, consisting chiefly of oak and the harder woods, until you reach the neighborhood of Meyers' Mill; from thence east, and extending south through Summit, Elk-Lick, Greenville, North and Southampton townships, and north, through Allegheny township, is to be found the softer woods, principally pine and hemlock, of unsurpassed quality.

The townships that I have enumerated are all within easy "striking distance" of your road, but they, by no means, comprise all the valuable timber lands of the county, as fully one-half of its area is clothed with a heavy growth, and every variety of timber known in a mountain country. This county, with her mineral resources as yet undeveloped, is, notwithstanding, improving and increasing in wealth with giant strides. She needs but a proper outlet for her trade, to equal, if not surpass any county in the Commonwealth in wealth and wealth-yielding exports. At present, the principal exports are butter, live stock, lumber, and maple sugar. Of butter there is exported, annually, about 1,600,000 lbs., which, at the average price of twelve and a half cents per pound, amounts to $200,000. Of cattle and horses, the annual cash value exported amounts to quite as much; of lumber, the trade being as yet in its infancy, there is sold, from the county, say $200,000 worth of sawed, and $100,000 worth of hewed, the latter finding outlet to tide-water, principally through Cumberland. Of the value of the maple sugar, I can form no correct estimate; the entire home consumption of sugar is manufactured in the county, and large quantities are exported, but generally in small lots, and by the manufacturers. It is, however, on the development of the vast mineral resources of this county that I confidently rely for her future wealth and greatness.

A stranger to her gigantic mountains, teeming with iron ore
304 and coal, can form no conception of the intrinsic value of the hidden treasures which the "iron horse" will yet drag from their bowels. Running, as your road does, for fifty miles within the borders of this county, and opening up and developing, as it must the untold stores of minerals along its route, I feel that I am not exceeding plain probability, in suggesting that the local trade of this county alone, in a few years, would more than defray the entire expenses of a road constructed, as this will be, over a route marked out by the great hand of nature, and having no formidable obstacles to overcome from its inception to its terminus.

Very respectfully, &c.,

ED. SCULL.

MOUNT SAVAGE, ALLEGHENY CO., MD.,
November 7, 1853.

* * * * * * * *

The united produce of the various saw mills in the counties of Somerset, Penn., and Allegheny, Md., which will probably send their lumber to market via the Pittsburgh and Connellsville railroad, amounts to little, if any, short of ten millions of feet per annum, to which may be added about two millions of plastering laths, and one million of shingles. The heaviest drawback to an immense present increase is the enormous cost of transportation by wagons from the mills to market.

As an illustration of this cost, I will only mention that my own payments, this year, for hauling will amount to fully eighteen thousand dollars, and this without including freight on anything sent beyond Cumberland. A diminution in this expense will not only very much extend the market, but will bring in a large tract of timbered land now valueless from its inaccessibility.

I think that the revenue which will accrue to the Pittsburgh and Connellsvile railroad from the lumber, coal, bark, and way
305 travel between the summit and Cumberland, may be safely set down at a gross sum of seventy-five thousand ($75,000) dollars a year.

Another immense source of revenue for this end of the road will be found in the Meyers's Mill or Castleman's river coal field, of which, in comparison with the Cumberland coal basin, I would offer the following estimate: The large vein of coal near Meyers's Mill may be considered as the equivalent of the ten-foot coal in the Cumberland basin, approaching it very nearly in quality, purity, and hardness, with a crystallization, perhaps, a little more perfect. Its distance may, probably, be estimated from Cumberland by the Wills's creek route at about 38 miles.

(Estimate by figures omitted.)

The various costs will, under these tariffs, stand as follows:

(Figures omitted.)

showing, between the Meyers's Mill coal and the Cumberland basin coal a difference in favor of Mount Savage road of 16 cents per ton, and in favor of Lonaconing of 5 cents per ton; but giving an advantage over the coal shipped by way of the Baltimore and Ohio road to the canal of 16 cents per ton in favor of the Meyers's Mill coal. As the present increased rates on the Baltimore road give the canal a heavy advantage, it is reasonable to conclude that the majority of the coal will seek that avenue, and, in consequence, the coal from Meyers's Mill will enter into favorable competition with the coal from one end of the Cumberland basis, and only have 16 cents a ton against it from the other and nearer end to the canal at Cumberland assuming that the rates charged on the Pittsburgh and Connellsville railroad are the same as on the Baltimore and Ohio.

This should secure a traffic of at least 300,000 tons of coal as soo

as so large a traffic can be provided for and accommodated, producing a gross revenue of $150,000 a year, to which add that already stated of $75,000 from way traffic, and you have a gross
306 revenue of $225,000. Allowing the working expenses to be 60 per cent. of the receipts, and you have a net revenue of $90,000 from the local receipts of one-fourth of your road, or of 9 per cent. on one-fourth of its estimated cost.

Very truly, yours,

HENRY THOMAS WELD.

UNIONTOWN, PENN., *Nov.* 17, 1853.

* * * * * * * *

In reply to your inquiries as to the extent, wealth, and mineral resources of Fayette county, I hasten to say that the territorial extent of this county is about 828 square miles, and the value of property assessed for taxation is $5,623,721, without any debt.

There is, perhaps, no county in the State of the same extent containing a greater amount of mineral wealth. Stone coal of excellent quality is found throughout this county in veins varying in thickness from three, six, nine, and twelve feet, all more or less bituminous. Limestone exists to an equal extent, and iron ore of excellent quality is found less extensively, but embracing, it is believed, nearly one-half of her territory; and wherever iron ore is found, the stone coal and limestone for fuel and flux are invariably found in juxtaposition.

These minerals have been extensively developed and used in the manufacture of pig and bar iron, castings, nails, &c., at some fifteen or twenty iron works, forges, furnaces, and factories along the Chestnut ridge and Laurel hill in said county, producing thousands of tons annually; but the great difficulty and expense of transportation have, heretofore, presented a most serious obstacle to the manufacture of iron in this otherwise favored region. This difficulty will be, in a great measure, obviated by the construction of the "Pittsburgh and Connellsville railroad," which will pass about forty
307 miles through this county, opening rich, extensive, and inexhaustible mines of stone coal along the entire line. Limestone will be developed to an almost equal extent, and iron ore of excellent quality will be found for about twenty-five miles of this distance, in connection with coal and limestone.

This road will also penetrate inexhaustible quarries of marble and forests of the finest timber, extending along the entire route from the Westmoreland to the Somerset line, with water power to operate mills and machinery to an unlimited extent. One hundred feet fall of the entire river may, at one place, be concentrated within a few rods at a comparatively trifling expense.

For fertility of soil and capacity for agricultural productions of every kind the western part of Fayette county, through which this road will pass, is believed to be unsurpassed by any other portion of our Commonwealth.

Yours, very respectfully,

A. STEWART.

The agents of the company for the negotiation of these bonds are Messrs. Winslow, Lanier & Co., No. 52 Wall street, New York, to whom reference is made for any information respecting them which may be desired.

WM. LARIMER, JR.,
President of P. and C. R. R. Co.

308 *Appendix.*

Extract from an act of assembly of the Commonwealth of Pennsylvania, entitled "An act to incorporate the Pittsburgh and Connellsville Railroad Company," appoved the 3d day of April, A. D. 1837:

SECTION 1. (Names commissioners and provides for publication of notice, in certain newspapers, of time and place of opening books for subscriptions to stock.)

SECTION 2. When two thousand shares, or more, shall be actually subscribed, and five dollars on each share paid to said commissioners, the said commissioners, or any ten of them, shall certify the same, under oath or affirmation, to the governor of this Commonwealth, and on receipt of such certificate the governor shall, by letters patent, under his hand and the seal of the Commonwealth, create and erect the subscribers, and if the subscription be not full at the time, then those who shall thereafter subscribe to the whole number of shares aforesaid, into a body politic and corporate, in deed and in law, by the name, style, and title of "The Pittsburgh and Connellsville Railroad Company," and by the same name the subscribers shall have perpetual succession and all privileges, franchises, and immunities incident to a corporation, may sue and be sued, implead and be impleaded, in all courts of record and elsewhere, may purchase, receive, have, hold, and enjoy, to them and their successors and assigns, lands, tenements, and hereditaments, goods, chattles, and all estate, real, personal, and mixed, of what kind or quality soever,
309 and the same, from time to time, to sell, mortgage, grant, alien, or dispose of, and make and have a common seal, and the same alter and renew at pleasure, and generally may do all and singular the matters and things which to them it shall lawfully appertain to do for the well-being of the said corporation and the due management and ordering of the affairs and the business of the same: *Provided*, That nothing herein contained shall be construed as giving to the said corporation any banking privileges or any other liberties, privileges, or franchises but such as may be necessary or incident to making and maintaining of the said railroad, and to the conevyance of passengers and the storage and transportation of goods, merchandise and commodities thereon.

SECTION 3. That for the management of the affairs of the said corporation twelve directors shall be elected by ballot, annually, by the stockholders of the said company; the votes to be delivered n person or by proxy, duly authorized, which directors shall appoint

one of their own number to be president, and shall respectively serve one year, or until other directors be elected, and shall have power to make such by-laws, rules, orders, and regulations, not inconsistent with the laws of the United States and of this Commonwealth, as may be necessary for the well-ordering of the affairs of the said company: *Provided*, That none but stockholders shall be eligible to be elected directors,* and at all general meetings or elections by the stockholders of said company, each share of stock shall entitle the holder or holders thereof to one vote, and each ballot shall have indorsed thereon the number of shares thereby represented, and also, that in all cases of election for directors, the twelve stockholders having the greatest number of votes shall be declared duly elected: *And provided also*, That no share or shares of stock shall be entitled to vote at any election, or at any general or special meetings of the said company, on which any instalments or arrearages may have been due or payable more than twenty days previously to the said election or meeting, and that all votes by proxy shall be upon such terms and conditions as are prescribed by the act passed the twenty-eighth day of March, in the year one thousand eight hundred and twenty, entitled "An act to regulate proxies:" *Provided*, That all proxies shall be dated within sixty days of the election, at which time the same shall be presented.

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SECTION 4. The aforesaid commissioners, or any ten of them, shall, as soon as practicable after the said letters patent shall have been obtained, give at least fifteen days previous public notice in the newspapers hereinbefore mentioned of the time and place by them appointed for the subscribers or stockholders to meet, for the purpose of electing twelve directors, as provided for in the preceding sections, and that annually thereafter they shall meet on the first Monday of December, for the purpose of electing directors as aforesaid, upon a like previous notice, to be given by the directors, for the time being, in such newspapers as they may deem advisable: *Provided*, That if from any cause such election shall not be held at the time specified therefor, the same may be held at any other time, on notice, as aforesaid; that until such election be held the directors of the preceding year shall continue to act, and that this charter shall not be avoided by reason of the irregularity or want of such election: *And provided also*, That in any case of vacancy, from death or resignation of any director, his place shall be filled by the board of directors.

SECTION 5. (Relates to meetings of the directors, appointment and compensation of officers, and power to enforce payment of instalments.)

SECTION 6. The directors first chosen, as aforesaid, shall issue a certificate to each stockholder for the number of shares he or she shall subscribe for or hold in said corporation, signed by the president, countersigned by the treasurer, and sealed with the common seal, subject, however, to all the payments due or to grow due thereon,

*See act of 10th April, 1846.

which stock shall be transferable, in person or by attorney,
311 executors, administrators, guardians, or trustees, under such regulations as may be provided by the by-laws.

SECTION 7. At each annual meeting of the stockholders the directors of the preceding year shall exhibit to them a complete statement of the affairs and proceedings of the company for such year, and that special meetings of the stockholders may be called by order of any three directors or by stockholders holding one-fourth in amount of the capital stock, on like notice as that required for annual meetings, specifying moreover the object of the meeting; but no business shall be transacted at such special meeting unless a majority of the stockholders shall attend in person or by proxy.

SECTION 8. (Relates to the route and preparation of a map or plot of survey.)

SECTION 9. (Provides for entry upon lands.)

SECTION 10. (Prescribes mode of ascertaining damages.)

SECTION 11. (Relates to use of public roads.)

SECTION 12. (Provides for accommodation of land owners by bridges and cross-ways over road.)

SECTION 13. On the completion of the said railroad, or any portion thereof not less than ten miles, the same shall be esteemed a public highway for the conveyance of passengers and the transportation of merchandise and commodities, under such regulations as shall be prescribed by the directors; and it shall and may be lawful for the said company to demand and receive such sum or sums of money for tolls of persons and property as they shall think, from time to time, reasonable: *Provided*, That the rates of toll shall not exceed two and a half cents per mile for each passenger, four cents per mile for each ton of two thousand pounds of freight, three cents per mile for each passenger car, and two cents per mile for each burden or freight car, every four wheels being computed as a car.*

SECTION 14. The president and directors shall have full
312 power to purchase with the funds of the said company, and place on the said railroad, all machines, vehicles, carriages, teams of any kind whatsoever, which they may deem proper and necessary for the purposes of transportation, and that they may also, to any extent which they may deem advisable, transport all goods, wares, minerals, and merchandise, or other articles that may be offered them for transportation, and all passengers wishing to be conveyed on their railroad; and the said president and directors may charge for toll and freight on all articles and for passengers so conveyed by them, their officers and agents, not exceeding twice the rates granted in the preceding section of this act for tolls alone: *Provided*, That if the said machines, wagons, vehicles, carriages, and teams shall be so used on the said railroad as to prevent or render unsafe the travelling upon any canal or public road now constructed or laid out, on or near the line of the said railroad, the legislature may order and direct such rules and regulations for the said machines, wagons, ve-

*See act of 10th April, 1846.

hicles, carriages, and teams as will secure such travelling safe and uninterrupted, and if such travelling shall be unsafe or interrupted, the court of quarter sessions of the respective counties through which the said railroad shall pass may order and direct such rules and regulations until the legislature shall have acted thereupon.

SECTION 15. Dividends of so much of the profits of the institution as shall appear advisable to the directors shall be declared at least twice in every year, and paid to the stockholders on demand at any time after the expiration of ten days therefrom, but they shall in no case exceed the amount of the net profits actually acquired by the company, so that the capital stock shall never thereby be impaired; if the said directors make any dividend which shall impair the capital stock of said institution, the directors consenting thereto shall be liable in their individual capacities to said company for the amount of stock so divided, and each director present when each di-
313 vidend is made shall be adjudged to be consenting thereto, unless he forthwith enter his protest on the minutes of the board, and give public notice to the stockholders at the declaring of such dividend.

SECTION 16. If it shall appear to the said company that the amount of capital authorized by this act is insufficient to complete the said railroad, and to accomplish the several objects of this charter, it shall be lawful for the stockholders assembled at any annual or special meeting to increase the said capital to the necessary amount, by increasing the number of shares and directing an additional subscription.*

An ACT of assembly of the Commonwealth of Pennsylvania, entitled, "An act for the relief of the overseers of the poor of the borough of Erie, and for other purposes."

SECTION 5. That the "Act to incorporate the Pittsburgh and Connellsville Railroad Company," passed on the third day of April, one thousand eight hundred and thirty-seven, be revived, extended, and continued in force upon the same terms, conditions, and limitations, from and after the passage of this act, as were contained in the original act, from and after the date of its passage: *Provided, however*, That the shares of stock be reduced from one hundred dollars to fifty dollars, and that the amount to be paid on each share at the time of subscribing be reduced from five dollars to two dollars and fifty cents: *And provided also*, That the commissioners named in the original act, or the survivors of them, have the same authority and power to act, and upon the same conditions and under the same limitations, as those commissioners had under the original act.

SECTION 6. That the counties of Allegheny, Westmoreland, Fayette, and Somerset, and any city, borough, or incorporated company, shall have authority to subscribe thereto as fully as any individual could do, and shall be represented at elections and in other acts of
314 said company by agents duly appointed by the commissioners of the respective counties, or by the mayors, chief officers,

* See act of 10th April, 1846.

and the presidents of said cities, boroughs, and incorporated companies, all which subscriptions may be required in instalments as the company may think proper: *Provided*, That no more than one-third of the money subscribed shall be required in any one year.

SECTION 7. That said company shall have full power and discretion to select any route from the city of Pittsburgh to Turtle creek *which may be deemed most eligible and advantageous, and may extend said railroad beyond Connellsville to Smithfield, or any other point on the waters of the Youghiogheny and within the limits of this Commonwealth*

Approved April 18th, 1843.

AN ACT authorizing the laying out of a State road from the borough of Orwigsburg, Schuylkill county, intersect a public road leading from Easton to Mauch Chunk, and for other purposes.

SECTION 9. That the rates of toll authorized to be charged by the thirteenth section of "An act to incorporate the Pittsburgh and Connellsville Railroad Company," approved the third, one thousand eight hundred and thirty-seven, shall not exceed two and a half cents per mile for each passenger, four cents per mile for each ton of two thousand pounds of freight, three cents per mile for each passenger car, and two cents per mile for each burden or freight car, every four wheels being computed as a car; and at all general meetings or elections by the stockholders of said company, each share of stock shall entitle the holder or holders thereof to one vote, and each ballot shall have indorsed thereon the number of shares thereby represented; and the provisos to the thirteenth and sixteenth sections be, and the same are hereby, repealed.

Approved April 10th, 1846.

315 *Letters patent of the Pittsburgh and Connellsville Railroad Company.*

PENNSYLVANIA, *ss:*

In the name and by the authority of the Commonwealth of Pennsylvania, Francis R. Shunk, governor of the said Commonwealth, to all to whom these presents shall come, sends greeting:

[L. S.] Whereas, by an act of the general assembly of this Commonwealth, approved the third day of April, one thousand eight hundred and thirty-seven, entitled "An act to incorporate the Pittsburgh and Connellsville Railroad Company," and the several supplements thereto, (titles and dates of supplements omitted,) it is, amongst other things, provided and enacted, that when two thousand shares or more shall be actually subscribed and two dollars and a half paid on each share to the commissioners, the said commissioners, or any ten of them, shall certify the same under oath or affirmation to the governor of this Commonwealth, and on the receipt of such certificate, the governor shall, by letters patent, under his hand and the seal of the Commonwealth, create and erect the subscribers, and if the subscription be not full at the time, then those also who shall thereafter subscribe to the whole number of

shares aforesaid, into a body politic and corporate, in deed and in law, by the name, style, and title of the "Pittsburgh and Connellsville Railroad Company." And whereas Thomas Bakewell, Lewis Peterson, George Darsie, Thomas S. Clarke, Joseph Pennock, Jesse Carothers, James Kelly, James Crossan, Wm. Robinson, jr., and John B. Butler, ten of the commissioners named in the said
316 act of the general assembly and the supplements thereto, have certified to me under oath that the following-named persons have subscribed two thousand and more shares of the capital stock of the said company, and actually paid two dollars and fifty cents on each share at the time of subscribing, viz: James Wood, Lyon, Shorb & Co., and others.

Now know ye, that by virtue and in pursuance of the power and authority to me given in and by the first-recited act of assembly, and the several supplements thereto, I, the said Francis R. Shunk, governor of the Commonwealth, create and erect the said subscribers, and also those who shall hereafter subscribe to the number of shares authorized by the said acts of assembly and the supplements thereto, into a body corporate and politic, in deed and in law, by the name, style, and title of the "Pittsburgh and Connellsville Railroad Company," and by the same name the subscribers shall have perpetual succession, and all the privileges, franchises, and immunities incident to a corporation, and may sue and be sued, implead and be impleaded, in all courts of record and elsewhere, may purchase, receive, have, hold, and enjoy to them and their successors and assigns, lands, tenements, and hereditaments, goods, chattels, and all estate, real, personal, or mixed, of what kind or quality soever, and the same from time to time sell, mortgage, grant, alien, or dispose of, and make dividends of such portions of the profits as them may deem proper, and also may make and have a common seal, and the same alter and renew at pleasure, and generally may do all and singular the matters and things which to them it shall lawfully appertain to do for the wellbeing of the said corporation, and the due management and ordering of the affairs and business of the same, and generally to have, possess, and enjoy all the powers, authority, rights, and privileges granted and authorized by the act of assembly first before recited, and the several supplements thereto, incorporating said company, and subject to all
317 the duties, requisitions, provisos, and restrictions specified and enjoyed by the same and other laws of this Commonwealth.

Given under my hand and the great seal of the State, at Harrisburg, this eleventh day of June, in the year of our Lord one thousand eight hundred and forty-six, and of the Commonwealth the seventieth.

By the governor:

J. MILLER,
Secretary of the Commonwealth.

AN ACT authorizing the cities of Pittsburgh and Allegheny, and the boroughs of West Newton and Connellsville, to subscribe to the stock of the Pittsburgh and Connellsville Railroad Company.

SECTION. 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That the cities of Pittsburgh and Allegheny, and the boroughs of West Newton, in the county of Westmoreland, and Connellsville, in the county of Fayette, are hereby authorized and empowered, by their corporate authorities, to subscribe for shares in the capital stock of the Pittsburgh and Connellsville Railroad Company; each of said cities not exceeding ten thousand shares, and each of said boroughs not exceeding two thousand shares, and to borrow money to pay therefor, and to make provision for the payment of the principal and interest of the money so borrowed, by the assessment and collection of such taxes as may be necessary for that purpose, and the certificates of loan to be issued by either of said corporations for the purpose aforesaid may be received by said "Pittsburgh and Connellsville Rail-
318 road Company," in payment of instalments on shares subscribed by said corporations, on such terms as shall be agreed upon between said company and said corporations: *Provided*, That no bond shall be issued for a less amount than one hundred dollars: *And provided further*, That the several acts of assembly limiting the debt of said cities shall not be construed to apply to any subscription which may be made under the authority of this act, or to any debt incurred therefor.

SECTION. 2. That the directors of the said Pittsburgh and Connellsville Railroad Company are hereby authorized to pay to the shareholders entitled to receive the same interest at the rate of six per centum per annum on all instalments paid by them, which interest shall be charged to the cost of construction, and continue to pay the same until the road shall be completed, and that until the period for which a dividend shall be declared, all the profits and earnings of the road shall be credited to the cost of construction: *Provided*, That no stockholder who shall neglect to pay up the instalments as called for shall be entitled to receive interest on the same: *And provided further*, That the stock of said company shall not be subject to any tax in consequence of the payment of interest hereby authorized.

Approved April 12th, 1853.

AN ACT to incorporate the Safe Harbor and Susquehanna Turnpike Road Company, authorizing the widening of Locust street, in Lancaster city, relative to subscriptions to the capital stock of the Connellsville Railroad Company, &c.

SECTION. 5. That the several counties heretofore authorized to subscribe to the capital stock of the Pittsburgh and Connellsville Railroad Company be, and the same are hereby, authorized
319 to borrow money to pay for such subscription, and to make provisions for the payment of the principal and interest of the money so borrowed, as in other cases of loans of said counties, and no

bond shall be issued for a less sum than one hundred dollars, and the certificates of loan or bonds issued or to be issued by either of said counties for the purpose aforesaid, bearing an interest of six per centum per annum, payable half yearly, may be received as cash by the said railroad company in the payment of instalments on shares subscribed by such county: *Provided*, That whenever certificates of loan or bonds shall be given by such county in payment of subscriptions, the same shall not be sold by said railroad company for less than par value, and so much of the act incorporating said company as limits the route of their railroad to the course of the Monongahela and Youghiogheny rivers be, and the same is hereby, repealed, so far as the same affects that portion of the line lying being between the city of Pittsburgh and a point on the Youghiogheny river, and less than six miles below Connellsville; and the said railroad company are hereby authorized to mortgage or otherwise encumber their said road, and any real and personal estate which may belong to it, for the purpose of carrying out the privileges granted by the act and the several supplements thereto incorporating the same; that the bonds which may be issued by any county, corporation, or municipality, as also the bonds or certificates which may be issued by said company to the stockholders in the same, shall not be subject to taxation until the clear profits of said road shall amount to six per cent.: *Provided*, That no bond shall be issued for a less sum than one hundred dollars.

SECTION 6. That the Pittsburgh and Connellsville Railroad Company are hereby authorized to extend their road to any point they may select in Somerset or Bedford counties, so to form a connection with the Chambersburg and Allegheny railroad, or any other railroad that may be constructed.

Approved the 18th day of April, A. D. 1853.

320 *Extract from the minutes of the proceedings of the board of directors of the "Pittsburgh and Connellsville Railroad Company," at a meeting held at their office, in the city of Pittsburgh, on the 17th day of October, A. D.* 1853.

On motion it was unanimously—

Resolved, That the president be authorized to guarantee the several bonds issued to this company by the county of Allegheny, Pennsylvania, and the city of Pittsburgh; and any other bonds issued in payment for subscriptions of stock in the "Pittsburgh and Connellsville Railroad Company."

OFFICE OF THE P. AND C. R. R. COMPANY,
Pittsburgh, November 29, 1853.

I do hereby certify that the above is a true and correct extract from the minutes of the proceedings of the board of directors of the Pittsburgh and Connellsville Railroad Company, at a meeting held on the 17th day of October last.

In testimony whereof I have hereunto set my hand and affixed the seal of said company, this 29th November, A. D. 1853.

[L. S.] WILLIAM LARIMER, JR.,
Pres't Pittsburgh and Connellsville R. R. Co.

Attest: H. D. KING, *Sec'y.*

(Here follows map marked page 320.)

321 *Exhibit Y.—Notes of testimony.*

The first witness called for the complainants was Mr. B. H. Latrobe, who was sworn.

322 B. H. Latrobe, examined in chief:

Is a citizen of Maryland and a resident of Baltimore, where he resided when he became the president of the Pittsburgh and Connellsville Railroad Company, July 1st, 1856. Knew that the city of Baltimore, in the first instance, indorsed the bonds of the company, which were exchanged during the first two years of his presidency for the city's bonds. There had been a mortgage, given for the indorsed bonds; and subsequently another mortgage when the city issued her own bonds. Both were recorded in all the counties through which the road was to pass; and the proceeds of the bonds were used for the purposes of construction.

Witness found the road, when he became president, open for travel and business between Connellsville and West Newton—twenty-five miles—and under contract from the latter place to Turtle creek, where it joined the Pennsylvania railroad—twenty-three miles. There were two locomotives, two passenger cars, and a few freight cars. From West Newton to Pittsburgh the communication was by steamboats. In January, 1857, the road was opened from Connellsville to Turtle creek—forty-eight miles; from Turtle creek to Pittsburgh the cars of the company were forwarded on the Pennsylvania railroad, by the engines of that road.

323 In February, 1858, the mayor and city council of Baltimore had their attention called to the expediency of extending the Pittsburgh and Connellsville railroad from Turtle creek to Pittsburgh, when the city agreed to waive its lien, which covered the whole work, so far as to permit $400,000 to be raised on bonds of the company, secured by a first mortgage on the Turtle creek division—twelve miles. There was much difficulty in negotiating these bonds, and a year elapsed before they could be made available. Some of them were paid out for work and materials, and some used to raise funds. In October, 1861, the Turtle creek division was opened, which completed the road from Connellsvill to Pittsburgh—fifty-seven and a half miles. A mile was built east of Connellsville, uniting with a road to Uniontown—twelve and a half miles.

In 1863, the rolling stock of the Pittsburgh and Connellsville Railroad Company consisted of twelve locomotives, with passenger and freight cars in proportion, though, even then, it was not fully equipped.

The business increased greatly after the road was opened into Pittsburgh, from $70,000, gross earnings, to $315,925 in 1864, and to near $400,000 in 1865.

In 1862 and 1863, applications were made to Congress to aid the road, which were referred to appropriate committees, and efforts were made to interest the roads leading west from Pittsburgh in the work. No pecuniary aid, however, was derived from either quarter.

When witness became president, in 1856, it had been considered important by the city of Baltimore that the disposition of the bonds, which it had agreed to issue, should be supervised by some person in whom the authorities had confidence. The ordinance contemplated the payment of the heavy floating debt of more than $600,000, and looked to the completion of the whole road to Cumberland. The witness, instructed by his board to raise money by a new issue of bonds, had access to good financial advice, in Mr. John Clark of Baltimore, had an opportunity of consulting with Mr. Peabody about the London market; and finding the negotiation of securities
324 either in this country or in England impracticable, was obliged to confine his attention to liquidating the floating debt, improving the condition of the road already built, working at the Sand Patch tunnel, and watching the market, in hopes of better times. About $200,000 was spent at the tunnel, when the work there ceased, in the latter part of 1857. In this year there was a financial crisis. One-half of the Allegheny county bonds had been disposed of in 1857. The county subscription was $750,000. The entire subscription of Pittsburgh, $500,000, had been disposed of before the presidency of the witness. The indorsed bonds of the city of Baltimore had been hypothecated, as well as the Allegheny county bonds. The interest due on the bonds of Baltimore and Allegheny county was paid up to July 1st, 1857, inclusive. The directors became personally responsible, at times, in their efforts to promote the work. The crisis of 1857, and the course of Allegheny county in regard to her securities, made it impossible to avail of them by sale at the limits fixed by the agreement with the county. General Larimer, the former president of the company, had used its funds, and was a debtor $220,000, of which not more than $60,000 was ever recovered. It was difficult even to dispose of the Baltimore bonds; for in addition to the $1,000,000 issued to the Pittsburgh and Connellsville Railroad Company, the city had in the market $5,000,000 issued to the Baltimore and Ohio Railroad Company. Every effort was made, however.

The effect of the crisis of 1857 was a general prostration of all public works. The attitude of Allegheny county prejudiced this particular road in the money market—as was ascertained by witness —in both New York and Boston. Efforts were made, from 1857 to 1864, notwithstanding, without relaxation, to procure the means to push the road on.

In 1863 the Baltimore and Ohio Railroad Company gave assurances of aid, and a committee was appointed to consult with the di-

rectors of that work, which went to Baltimore for the purpose. $1,000,000 was promised. The road was prepared for contract from Connellsville to Cumberland, and in March, 1864, proposals to construct it were called for in the Pittsburgh and Baltimore papers.

325 (The advertisement was read to the jury, also the circular to contractors.)

Bids were made on personal inspection by the contractors, and were accepted contingently for the whole road. The contingency was the repealing law, which it was hoped the governor would veto.

Speaking of the contracts made before the witness became president of the company, he stated that as an engineer he regarded them as reasonable. The first contractors at the Sand Patch tunnel had failed in 1856; but the work was relet in 1857, at a small advance.

Had all the company's securities been realized at par at first, there still would have been required more money to finish the entire work.

Cross-examined:

Only the Turtle creek division was to be paid for in bonds issued by the company. Does not know that any other part of the road was to be paid for in bonds. Half the Allegheny county bonds had been used when witness became president of the road.

When the ordinance of 1856 was passed by the city of Baltimore, the commissioners of finance were authorized to make certain arrangements—and this made it necessary for a Baltimorean to be appointed president.

Horace B. Frye, examined in chief:

Is a banker and broker; was one in 1856; particularly engaged in handling railroad securities. In 1857 the market was glutted with them. It was deemed better that cities and counties should lend their credit. Up to July, 1857, inclusive, the Pittsburgh and Connellsville Railroad Company had paid the interest on the city and county bonds that had been loaned to them. In 1857 the conduct of Pittsburgh and Allegheny county had injured their securities. Sales were made as low as 33, interest included. The Pittsburgh and Connellsville Railroad Company was not the only company affected. The Pittsburgh and Steubenville and the Allegheny Valley railroad were equally so.

326 After the failure of the Bank of Pennsylvania, in 1857, there was a general tumbling down. All, except companies in the highest credit, lost their facility of raising money. Even the Pennsylvania railroad passed its dividends. The recovery was slow. Our attention was directed especially to western roads about Pittsburgh. In 1858–9, securities of these were very difficult to negotiate; and, indeed, until it was known that creditors would obtain their rights. In 1862 these western bonds sold as low as 40 cents, with four years coupons thrown in.

In the spring of 1864 would have been able to negotiate $20,000 a mile on a first mortgage of the Pittsburgh and Connellsville rail-

road. In 1864–5 Allegheny Valley railroad bonds sold as high as 105. In November, 1863, the tide of speculation had begun to turn.

Cross-examination waived.

A. J. Bandel, examined in chief:

Was clerk of the first branch of the city councils of Baltimore from 1857 to 1864. Mr. Latrobe, president of the Pittsburgh and Connellsville road, was repeatedly before the councils on behalf of his company, and was indefatigable in his efforts to promote its interests in that quarter. It was in consequence of his representations that the city's lien was lifted from the Turtle creek division. The councils had great confidence in him; whatever he asked was granted.

Cross-examination waived.

General Russell, examined in chief:

Was commissioner of the Pittsburgh and Connellsville Railroad Company to negotiate the right of way from Pittsburg to Cumberland, in the year 1853. Was secretary and treasurer of the company from 1857 to 1861, when he became adjutant general of Pennsylvania, which office he still holds. Knows the fact, beyond all question or controversy, that no board of directors were ever more indefatigable in their exertions to build a road. They knew they had the best route and were anxious to avail of it. Their annual reports, prepared by the officers of the company, show what they were
327 doing. Their accounts were kept with great exactness; not a dollar was expended without the inspection of the finance committee. The directors were chosen from among leading citizens of Pittsburgh, with ability to aid the road, and who did aid it. The general opinion was that the Pittsburgh and Connellsville railroad was one of the most important, if not the most important, road leading from Pittsburgh. The alternative route was the Pennsylvania railroad. And, in the opinion of witness, if the company could only be made to see it, the construction of the Pittsburgh and Connellsville road would be of benefit to the Pennsylvania road itself. There would then be two routes to the east, and there would be enough business for both of them.

General Russell then proved the annual reports of the Pittsburgh and Connellsville Railroad Company of 1858, 1859, 1860, and stated that the expenditures of the company while he was in its service were confined strictly to the legitimate business of the road.

J. J. Dull, examined in chief:

Is a contractor on public works. Saw the advertisements of the Pittsburgh and Connellsville Railroad Company in 1864, and became a bidder, and had his bids accepted. Was prevented from going on with the work in consequence, as he understood, of some adverse legislation. His bids were for some six or seven miles from Connellsville, and for some ten or twelve miles from Turkey Foot

(This witness proved the circulars addressed to contractors descriptive of the work.)

Cross-examination waived.

Benjamin Deford, examined in chief:

Was a director in the Pittsburgh and Connellsville Railroad Company. In the opinion of witness, every effort that could be made was made to push on the work. For thirty years, to his knowledge, it had been regarded as a most important object. After 1856 active efforts were made to prosecute it. Mr. Latrobe was then made
328 president; and all the acts of the company from that time show a persistent desire to prosecute the work.

Cross-examination waived.

William McCreery, examined in chief:

Is a member of the board of trade of Pittsburgh. Knows Mr. B. H. Latrobe, and knows the efforts made by him to push on with the construction of the Pittsburgh and Connellsville road. Witness paid particular attention to what was being done, and never heard but one opinion expressed, which was that their efforts were as great as could be possibly made by any president or board of directors. The repudiation of their obligations by Pittsburgh and Allegheny county entirely stopped the work, until it moved again on the Turtle creek division. All the works leading from Pittsburgh, except the Pennsylvania Central, were effected by this repudiation. The other works not finished were the Pittsburgh and Steubenville, the Allegheny Valley, the Chartier's Valley. The securities of the Pittsburgh and Fort Wayne road were protested in 1857. Its stock sold as low as $1 a share in the course of that year. The crisis of 1857 stopped the railroads, and its effect and the effect of the war did not wear out until 1863.

Cross-examination waived.

Samuel Gormley, examined in chief:

Is a citizen of Pittsburgh. The crisis of 1857 caused an unusual depreciation in all values. The bonds of the Pittsburgh and Connellsville Railroad Company were rendered valueless or nearly so; nor was there any general improvement until greenbacks began to take the place of money. The crisis of 1857 and the conduct of the *the* city of Pittsburgh and Allegheny county with reference to their securities discouraged and prostrated everything.

Cross-examination waived.

Isaiah Dickey, examined in chief:

Resides in Pittsburgh. In the fall of 1857 the money market was greatly depressed—there was a general failure throughout the
329 country. Repudiation by Pittsburgh and Allegheny county discredited almost everything. Allegheny Valley railroad shares sold for $5 a share. Fort Wayne and Chicago sold for $9 a share. The board of trade of Pittsburgh were called together to hear the representations of the president of the Pittsburgh and Connellsville Railroad Company. The president and directors of that company were untiring in their efforts; nothing that could be done was omitted. This was the universal opinion of every one familiar with the transactions of the day.

Cross-examination waived.

General Russell, recalled in chief:

The Turtle creek division was a great trouble to carry through. The bonds issued for it had to be disposed of in small amounts. It was thought that if we could get the Turtle creek division completed, and the city of Baltimore would waive its prior lien, the board would be constructed from point to point.

Cross-examination waived.

James McCauley, examined in chief:

Resident of Pittsburgh; was familiar with the condition of the money market. It was tight in 1856—in 1857 there was trouble. The failure of the Ohio Life and Trust Company caused a general break up, affecting other institutions instantaneously. The effect on railroad stocks in 1858, 1859, was calamitous. Few if any sales were made for three years. Railroad stocks were in especial disfavor. In 1861 bonds could not have been negotiated except at great sacrifices. Things began to improve in 1863, were prosperous in 1864, and very prosperous in 1865. In 1864, the Pittsburgh and Connellsville Railroad Company could have negotiated its bonds secured by mortgage.

Cross-examination waived.

Isaac Jones, examined in chief:

Has resided in Pittsburgh since 1832. Is president of the Pittsburgh and Steubenville Railroad Company. Describes the difficulties of that company in 1857. Financial difficulties compelled sus-
330 pension of the work from 1857 to 1863. No unfinished road could have negotiated bonds in 1858–'59–'60 and '61. In the spring of 1864, the Pittsburgh and Connellsville railroad could have negotiated a loan on a first mortgage.

Cross-examination waived.

Alexander Miller, examined in chief:

Is a resident of McKeesport—through which the Pittsburgh and Connellsville railroad runs. Recollects the condition of the money market from 1857 to 1861. Greatly depressed. Improvement began in 1861. The money market was flush in 1863 and 1864. From the character of the Pittsburgh and Connellsville railroad, a very liberal subscription could have been obtained by it in 1864.

Cross-examination waived.

J. L. Graham, examined in chief:

Is president of the Alleghany Savings Bank. In 1857, the bonds of the Pittsburgh and Connellsville Railroad Company could not have been negotiated, nor was there any change in this respect from 1857 to 1862. In the close of the last year, 1862, confidence began to return. In 1858–'59, the stock of the Pittsburgh and Connellsville road sold at ten cents a share. Allegheny Valley railroad stock at sixty cents a share. Fort Wayne and Chicago at $2 00 a share.

The last, at marshal's sale, sold at from forty cents to $5 00 a share. In the spring of 1864, the Pittsburgh and Connellsville Company could have negotiated a loan.

Cross-examination waived.

Patrick Howley, examined in chief:

Is a contractor on public works. A resident of Allegheny county. Saw the advertisements for proposals of the Pittsburgh and Connellsville Railroad Company. Bid on many sections—for one-half of the road. The bids were returned in April, 1864. Witness bid on eighty-seven sections—and had seven awarded to him. Had been a contractor on many of the Pittsburgh roads in the last seventeen years. The troubles of 1857 stopped the work on all the
331 unfinished roads. Notified that the repealing law stopped the contract I had bid for. J. J. Dull is a man of means—is the contractor for the Chicago tunnel.

The court adjourned until nine o'clock, the 23d June.

JUNE 23.

The court met.

S. Low, examined in chief:

Is a civil engineer connected with the Pittsburgh and Connellsville Railroad Company—and made the location from Connellsville to Cumberland in 1857. I went over the whole road in 1864, so that contractors might examine it and bid. The location stakes were visible. The location crossed the dividing line between Pennsylvania and Maryland, in Bedford county, Pennsylvania, and Allegany county, Maryland. The road is built and worked a mile east of Connellsville. The tunnel at the Sand Patch is finished all but about two hundred feet. The heading is through. The whole tunnel could be finished in a year. It is the heaviest part of the work. One of my assistants went over the road with the contractors—who had the reputation of being among the best in the United States. The surveys for them were made in April, 1864. This witness described the present condition of the road between Pittsburgh and Connellsville.

Cross-examined by defendant's counsel:

Is asked for and shows a plan of the location. Did not visit the Summit from 1857 to 1864. The tunnel had in some places fallen in in the interval. It has three shafts, one is one hundred and fifty-seven feet deep—the depth of the other not recollected. No one was working there in 1864.

Re-examined in chief:

It took very little to place the tunnel in a condition to resume work on it.

J. I. Atkinson, examined in chief:

Is secretary and treasurer of the Baltimore and Ohio Railroad Company. On the 10th November, 1863, the president of the Bal-

timore and Ohio Railroad Company addressed the following letter to the president of the Pittsburgh and Connellsville Railroad Company, offering aid to the extent of $1,000,000.

332 BALTIMORE AND OHIO RAILROAD, PRESIDENT'S OFFICE,
Baltimore, November 10th, 1863.

DEAR SIR: I much regret that many important engagements of the most urgent character, connected with the affairs of the company and the operations of the road at this particular period, prevent me from attending the called meeting of the stockholders of your company on the 12th inst. I would make it a point to be present on that occasion were it in my power, not only as the representative of the Baltimore and Ohio Company, but for the purpose of removing impressions in regard to the course and policy of this company which you inform me exist, and which are, as far as I understand them, most unjust.

I regard the completion of the Pittsburgh and Connellsville road to Cumberland not only as a local, but as a national work of the first magnitude. I am prepared, as soon as a suitable contract for its construction can be made, to recommend to the Baltimore and Ohio Railroad Company to aid it to the extent of one million of dollars; and I am altogether satisfied that the regulations of the two companies, looking to their successful working as a through route, can be placed upon such a basis as will produce the most beneficial results, and which must prove mutually satisfactory.

The communities of Pittsburgh, Cumberland, and Baltimore, as well as the populations of the large portion of the territories of Pennsylvania and Maryland, with which the line is identified, cannot fail to be greatly and permanently benefited by its construction. With the aid the Baltimore and Ohio Company can extend, and the legislation that the city of Baltimore will, in all probability, grant, or the aid which may be obtained under the operation of its existing ordinances, and with the practical co-operation of the great interests connected with the route, there should be no question that the through connection between Baltimore and Pittsburgh can be established within a brief period, or indeed as rapidly as the labor can be procured for its construction.

333 I should have been happy to have had an opportunity of presenting these views to the stockholders of your company in person, and shall certainly take an early occasion to confer with them.

In the meantime the proxy of this company will be presented by Col. J. Spear Nicholas, who is accompanied by Messrs. Abbott and Beall, directors of our company, who will, I am sure, confirm the assurances now made.

I am, with great respect, your obedient servant,
(Signed) J. W. GARRETT, *President.*

B. H. LATROBE, Esq.,
President Pittsburgh and Connellsville Railroad Co.

On the 11th November, 1863, this letter was adopted as the act of the board of directors of the company.

Extract from the minutes of the board of directors of the Baltimore and Ohio Railroad Company.

NOVEMBER 11TH, 1863.

Resolved, That the foregoing proceedings and letter be approved and adopted by the board.

I certify the foregoing to be a true copy.

J. I. ATKINSON, *Secretary*.

The Baltimore and Ohio Railroad Company owns the bonds of the Pittsburgh and Connellsville Railroad Company for $170,900, bought between August, 1864, and May 17, 1866, at a cost of $138,962 75. The company originally subscribed 700 shares of stock—owns now 23,722, costing $79,425 14. The stock was purchased through a broker in Pittsburgh. The whole capital stock is about 34,000 shares. Never heard an unfriendly expression by the board of directors, or any of its members, in regard to the prosecution of the Pittsburgh and Connellsville railroad. The object of getting the stock in the road was to go ahead with the work.

(Mr. Atkinson is here shown another letter from the presi-
334 dent of the Baltimore and Ohio Railroad Company to the president of the Pittsburgh and Connellsville Railroad Company, which the defendant's counsel, after reading, objects to.)

The letter is then submitted to the court, without argument, and the objection is overruled, and the letter read, as follows:

BALTIMORE AND OHIO RAILROAD, PRESIDENT'S OFFICE,
Baltimore, January 1st, 1864.

B. H. LATROBE, Esq.,
President Pittsburgh and Connellsville Railroad.

DEAR SIR: The satisfactory issue of the contest in which the Baltimore and Ohio Railroad Company found itself lately involved before the circuit court of the United States at Pittsburgh, induces me to suggest to you in writing—that you may present it to the board of directors of your company—what was stated in our conversation of Thursday last.

Whatever may have been said to the contrary, there can be no question that this company is fully alive to the importance of completing the Pittsburgh and Connellsville road to Cumberland at the earliest practicable date. It was under this conviction that this company obtained, in 1861, its present large amount of stock in the Pittsburgh and Connellsville road; and why more was not done, soon afterwards, towards the work of construction, is, so far as the Baltimore and Ohio railroad is concerned, sufficiently explained by the condition of the country, and the varied and extraordinary difficulties under which the company has labored.

The time, it is hoped, has now arrived, however, for active efforts. You have already my communication of 10th November last, which was subsequently sanctioned by the board of directors pledging this company's aid to the extent of one million of dollars.

To complete the road, to stock it, and to lift certain incumbrances, some three and a half million dollars, in addition, will, it is supposed,

be required, making the aggregate $4,500,000, to be secured by a first mortgage on the entire work, which the mayor and city council of Baltimore, now holding the prior lien, have agreed to unite
335 in giving, so soon as the commissioners of finance shall be satisfied that the funds have been procured to complete the undertaking.

That this loan may be placed properly before the public, it seems to me important that your company should ascertain, at the earliest date, the sum required for construction, by obtaining proposals from responsible contractors, of whose ability satisfactory proof should also be obtained.

When this matter is placed beyond reasonable doubt, (as I am advised that it can be,) the lifting of the city's mortgage follows as a matter of course; and with such security as can then be offered, the Baltimore and Ohio Railroad Company taking a million of the loan at once, at par, the balance of the subscription can, without doubt, with the cordial co-operation of western capitalists, be readily filled up on the same terms, and the work commenced forthwith, and pressed to completion without interruption.

The whole of the means being secured in advance, your operations can be conducted under the most favorable auspices, and Pittsburgh and Baltimore be brought into that close connection which is so desirable to both cities.

So far as any efforts on my part may be thought useful in bringing about this result, they will not be wanting; and I look forward with pleasure to meeting your board at an early day, that I may assure them personally of my zealous co-operation.

While, however, the Baltimore and Ohio Railroad Company is thus willing to aid to the extent stated, and to lend all its influence to obtain the requisite subscriptions and complete the work, it anticipates such action on the part of the people of Pittsburgh as shall afford prompt and material assistance in the accomplishment of an object in which the two communities are so deeply interested.

It is proper to add that effective aid is also anticipated from merchants and property owners of Baltimore, as the most comprehensive minds in this community realize the importance and value of the construction of a line presenting so short an avenue to tide-water, with grades and curvatures the most favorable, by which not
336 only the best relations will be established in connection with the great business of Pittsburgh, but a superior and much needed communication opened with the vast and fertile territories bordering upon the lakes, and of the northwest.

Very respectfully and truly, yours,

(Signed) J. W. GARRETT,
President.

Cross-examination waived.

William Oden Hughart, examined in chief:

Has been connected with the Pittsburgh and Connellsville Railroad Company since 1859, and succeeded General Russell as treasurer

and secretary in 1861, and held the office till 1864, when elected president. The annual reports of the company contain a complete history of it; the balance sheet showing everything financial.

The assets of the company in 1856 were:

Allegheny county bonds		$374,000 00
Baltimore city guaranteed bonds		269,000 00
Baltimore city bonds		266,000 00
Stock of Baltimore city		386,872 17
Connellsville bonds		100,000 00
McKeesport "		99,900 00
A. M. Hill & Company		5,000 00
Bills receivable		860 50
Manufac. and Farmers' B'k stock		5,000 00
W. Larimer & Company		179,512 88
Sundry small accounts		1,112 55
Cash		66,292 92
		1,753,551 02
The net earnings from 1855 to 1864, Oct. 31, were	$359,690	
Capital stock	87,570	
Net proceeds of the Turtle creek issues	379,675	
		826,935 00
Gross assets		2,580,486 02
From which the amount actually realized was		2,009,579 00

337 By agreement with the commissioners of Allegheny county these bonds were not to be sold for less than seventy cents. They averaged upwards of 78 per cent. of their par value.

The above receipts were expended as follows:

Road bed		$328,720
Track		207,178
Right of way		75,396
Real estate		51,517
Station buildings		60,415
Rolling stock		118,820
Engineering		32,095
General expenses		100,582
Interest account—		
Allegheny coupons	$19,290	
Pittsburgh coupons	30,180	
Baltimore interest	15,074	
Commissions	448	
Floating debt	116,204	
Turtle creek bonds	83,614	
Floating debt on Turtle creek	5,401	
Floating debt	719,579	
		$1,987,697

Bills receivable	$909
Cash	8,973
Balance in sinking fund	12,000
	2,009,579
The floating debt October 31, 1856, was	$788,862
The net revenue in 1856	
In 1857	$827 48
1858	971 98
1859	5,588 82
1860	21,041 26
1861	21,217 06
1862	39,437 24
1863	95,228 89
1864	101,568 12
	*285,880 85

338 The roads at Pittsburgh wanting outlets eastward, are:

The Fort Wayne road of	467 miles.
The Steubenville road of	43 "
Allegheny Valley	44 "
Cleveland and Pittsburgh	150 "

*NOTE.—The above statement was taken from the witness as he replied to particular questions. The following is made up from the books of the company, in detail, showing its condition accurately at the time referred to:

Statements of amounts received by Pittsburgh and Connellsville Railroad Company between October 31st, 1856, and October 31st, 1864, as per annual reports and account books.

ASSETS IN COMPANY'S HANDS OCTOBER 31ST, 1856.		
Allegheny county bonds		$374,000 00
Baltimore city securities		921,872 17
Borough of Connellsville bonds		100,000 00
Borough of McKeesport bonds		99,900 00
Bond of A. M. Hill & Co		5,000 00
Bills receivable		860 50
Bank stock		5,000 00
Debts due company, William Larimer	$179,512 88	
Sundry accounts	1,112 55	
		180,625 43
Cash with treasurer and agents		66,292 92
		1,753,551 02
AMOUNTS RECEIVED BETWEEN OCTOBER 31ST, 1856, AND OCTOBER 31ST, 1864.		
Collections of capital stock	87,570 62	
Whole issue of Turtle creek bonds	400,000 00	
Received from transportation department, including debit balance of year 1856	331,491 75	
		819,062 37
		2,572,613 39

The efforts made by the president and directors of the road to prosecute the work, while witness has been connected with it, have been unremitting.

339 The president, Mr. Latrobe, visited New York, and was unwearied in his exertions.

Cross-examined by defendants' solicitor:

The Allegheny county bonds were sold at 78 cts. on the dollar—

Statement of amounts received, &c.—Continued.

ASSETS IN COMPANY'S HANDS OCTOBER 31ST, 1864.		
Allegheny county bonds	$7,000 00	
Borough of McKeesport bonds	52,900 00	
Bills receivable	909 40	
Turtle creek bonds	3,800 00	
Debts due company, Wm. Larimer $152,904 65		
Sundry accounts including cash with treasurer and agents 8,893 19		
	161,797 84	
		$226,407 26
Amount to be accounted for		2,346,206 13

Expenditures of Pittsburgh and Connellsville Railroad Company, accounting for the receipts between October 31st, 1856, and October 31st, 1864.

Construction—		
Road bed	$328,719 92	
Railway tracks	207,177 96	
Right of way	75,396 43	
Station buildings	60,415 56	
Engineering	32,094 18	
		$703,804 05
Real estate		51,516 92
Rolling stock		118,820 46
General expenses		100,583 10
Interest account—		
Coupons Allegheny county bonds	19,290 46	
Coupons Pittsburgh city bonds	30,180 00	
Interest on Baltimore bonds	15,074 22	
Coupons on McKeesport bonds	12 00	
Interest on floating debt	121,605 92	
Interest on stock	7,012 38	
Coupons Turtle creek bonds	83,613 73	
		276,788 71
Profit and loss—		
Commissions, paying coupons, collections, &c.	7,718 06	
Discount sales, Allegheny county bonds	115,368 58	
Discount Baltimore bonds	95,834 47	
Discount Connellsville bonds	85,000 00	
Discount McKeesport bonds	42,617 50	
Discount Turtle creek bonds	16,525 00	
		363,063 61
On account of floating debt		719,629 28
On account of sinking fund		12,000 00
		2,346,206 13

7,000 were on hand in 1864. The Baltimore city guaranteed bonds were exchanged for the city's own bonds. There was an arrangement made with Connellsville and McKeesport, which the witness explained in detail, in regard to their subscription.

The road was begun to be worked as soon as twenty-five miles were completed—in April, 1855. Twenty-three miles more were completed in January, 1857. The Uniontown branch was added at the close of 1861.

340 The amount of the company's stock October 31st, 1856, was 34,710, after deducting the Cumberland and certain unpaid subscriptions.

Of the individual stock there was paid in full	$75,550 00
Of the individual stock there was paid in part	27,343 31
Paid in stock for right of way	94,950 00
Making cash collected from subscriptions	197,843 31

See the report of October 31st, 1856, p. 34.

The witness here underwent a close cross-examination in regard to a supposed discrepancy between the amounts of stock stated to have been issued in different reports, which cannot well be given in detail without unnecessarily extending the present report, but the result of which was that the reports of subscriptions made in the commissioners' books, and returned from time to time as the treasurer could collect them to make up his stock list, and the issue of stock from time to time to individuals, in lieu of cash, made up the differences referred to.

The amount unpaid on stock in 1860 was $393,341 13. A map showing the location of the road was placed in the office of the secretary of state at Harrisburgh, when it was understood that the map originally filed there could not be found. The last map was returned to Pittsburgh to have a certificate in a prescribed form appended to it.

The arrangement with Connellsville gave the company $15,000 for its bonds, which were returned after the borough had released certain conditions binding the company. McKeesport repudiated, and its bonds were unavailable; there is still on hand of them $52,000. The arrangement with Connellsville was an advantageous one to the company.

B. H. Latrobe, recalled in chief:

In 1860 I recommended the purchase of the stock of the Pittsburgh and Connellsville Railroad Company, then in the market, by the city of Baltimore. I did this under a sense of my responsibility as a director on the part of the city. There were resolutions
341 passed authorizing the purchase, which the mayor vetoed. I renewed the recommendation in 1861, but the war had broken

out, and political and pecuniary considerations prevented action. I then went to the Baltimore and Ohio Railroad Company, and the stock was purchased on my recommendation.

The Cumberland subscription depended upon conditions that made it unavailable.

The original map of the location not being found at Harrisburgh, another was sent, which was returned, that it might be certified under seal. It was reported that when the State papers were removed, in anticipation of the confederate raid, the original map was lost.

Is entirely familiar with the route of the Pittsburgh and Connellsville railroad since 1837, when it was one of the routes which witness surveyed for the Baltimore and Ohio railroad, while he was in the service of that company.

Witness here repeated the circumstances leading to the exchange of the indorsed bonds for the bonds of the city of Baltimore itself.

Mr. Hughart was recalled, and made explanations in regard to the Larimer indebtedness and the sinking fund for the Baltimore loan, referred to in the statements made in his first examination in chief.

The court adjourned to Monday, the 25th June, at 9 a. m.

MONDAY, *June 25th*.

S. Low, recalled in chief:

I made the map already proved by me in 1853 from actual survey. Some of the mere drawing was added in 1857. At request of counsel I have made a map showing the route on a scale of one-half the original. The dotted line is the division between Somerset and Bedford counties.

Cross-examined by Judge Black:

The length of the tunnel and its approaches are represented on this map (the reduced one) at about 5,000 feet.

342 The distance from Turkey Foot to Cumberland is thirty-six miles. Does not know that the Sand Patch ridge is in the dividing ridge between the waters of the Potomac and Monongahela. Flaherty creek is a mile and a half off on one side, and some twenty-five or or thirty springs flow into Wills creek on the other. All this is shown on the map. The Sand Patch ridge is the narrowest dividing ridge between the eastern and western waters.

B. H. Latrobe, recalled for complainants:

The route of the Monteveu Mining Company's road is marked on the reduced map from Meyers' Mills into Maryland. The route of the Pittsburgh and Connellsville railroad passes up Castleman's river to Meyers' Mill, and thence through the Sand Patch tunnel, and along the waters of Wills creek to Cumberland. Regarded the work done on the Sand Patch tunnel as virtually complying in spirit with the city of Baltimore's subscription, being in furtherance of the general object which the city had in view. The work was stopped in

1857, when $221,000 had been expended. Some $15,000 or $16,000 have been expended recently in preparing to go on with it. The only value of the Sand Patch tunnel is in connection with a through route. There was a report of the Monteveu road made by its engineer some ten years since.

B. F. Chandler, examined for complainants:

Has been connected for the last twenty years with the State department at Harrisburgh.

Produces the map of the Pittsburgh and Connellsville railroad, (a copy of Mr. Low's map on transparent cloth,) filed on 15th August, 1865. On the 20th January, 1857, a map was filed, of which the witness reads the entry from the record book in the office of the State department.

The earlier map is not now to be found, though carefully searched for. General Russell inquired for it about a year ago. A number of public papers were packed for removal in a box that has been lost; the original map may have been one of them.

343 General Russell recalled:

The original map of 1857 was filed by witness, who saw it afterwards in the office at Harrisburgh. There was but one map of the route between Connellsville and Cumberland. When the original map was missed, about a year ago, witness informed the company, and a new map was prepared and filed—no change in the route.

Mr. Low recalled:

The original map filed was a copy on a reduced scale of that now before the jury, and was made in 1857.

Cross-examined:

The surveys were completed in 1853–'4, and were revised without change of location. Grades were changed, but not location, except, perhaps, a few feet to the right or to the left.

B. H. Latrobe recalled:

The route was staked out and adopted in 1856.

The complainants then rested their testimony.

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346 The following offers of testimony were then made in writing by the defendants, and objected to, also in writing, by the plaintiffs:

Offer No. 1.

The defendants, to maintain the issue on their part, now offer to show that the Pittsburgh and Connellsville Railroad Company had, at and immediately before the time of the passage of the act of assembly of 11th of April, 1864, on their books 7,747 shares of stock

unpaid and yet uncollected, and that the said company has not yet collected the same or made the slightest effort to do so, but allowed, and do yet allow, the same to stand unpaid, and that so the State has been defrauded and wronged by the said company in its wilful omission to perform the plain duty of collecting the stock subscribed and applying it to the work undertaken to be done.

The plaintiffs object to the foregoing offer, because—

1st. That the evidence offered does not prove or tend to prove any act of misuse or abuse by the Pittsburgh and Connellsville Railroad Company of any of the privileges granted by their charter within the true meaning of their act of incorporation and its supplements.

2d. That the offer is to disclose alleged acts of abuse or misuse not set forth in the repealing act of 1864.

3d. The offer does not propose in its terms to restrict the evidence to facts between the 11th day of April, 1856, and the 29th day of April, 1864.

This offer is overruled. Proceed with another branch of your case.—Per curiam.

Offer No. 2.

The defendants, by way of proving and maintaining the issue on their side, offer to show that the Pittsburgh and Connellsville Railroad Company did, prior to the 11th day of April, 1864, to wit, some time during the year 1847, misuse and abuse its privileges and franchises in this, that the said company did corruptly and wrongfully, and in direct violation of its charter, abandon the work which, by accepting its charter, it undertook to do, and transferred its
347 privileges to another association, for the purpose of making another road, running from Pittsburgh to the Ohio State line; and the defendants propose to follow this by showing that the fraud so as aforesaid committed by the Pittsburgh and Connellsville Railroad Company was taken advantage of by the stockholders, who refused to pay their subscriptions; and in consequence thereof the said Pittsburgh and Connellsville Railroad Company is now, and has been ever since, unable to collect the said stock, and thereby is and has been, by its own fraud and corruption, deprived of its means to make the said road.

The plaintiffs object to the foregoing offer:

1st. Because the act complained of was done under and by virtue of an act of assembly of Pennsylvania, approved 13th March, 1847, and was therefore neither abuse nor misuse within the meaning of the charter of the Pittsburgh and Connellsville Railroad Company.

2d. Because the act proposed to be proven took place prior to the 11th day of April, 1856, the date of the condoning act.

The offer is overruled per curiam.

Offer No. 3.

Defendants now offer to prove that the Pittsburgh and Connellsville Railroad Company, prior to 29th April, 1864, to wit, about the

year 1855, did abuse and misuse its franchises by wilfully, fraudulently, and illegally taking possession of a part of the canal belonging to the State of Pennsylvania, in the city of Pittsburgh; that the proper State authorities, to wit, the canal commissioners, commenced legal proceedings against the said company, and compelled it to remove its road from that place by the final decree of the supreme court.

The plaintiffs object to the foregoing offer because—

1st. The act proposed to be proved was not an act of
348 abuse or misuse within the true meaning of the act of incorporation of the Pittsburgh and Connellsville Railroad Company.

2d. Because the said act is not alleged against said company as a ground of such repeal by the repealing act of 1864.

3d. Because the act proposed to be proven took place prior to the act of 1856, condoning the previous conduct of the company.

Offer overruled per curiam.

Offer No. 4.

The defendants now offer to prove that the Pittsburgh and Connellsville Railroad Company did, prior to the act of 29th April, 1864, abuse and misuse its franchises, in this, that said company procured by the solicitation of its officers and corporators, and other agents appointed for that purpose, a subscription to be made to its capital by the city of Pittsburgh to the amount of $500,000, and another subscription of $750,000 by the county of Allegheny, taking therefor the bonds of the said city and county, on which the said company promised that it would pay the interest and save the said city and county therefrom harmless and indemnified; but the said company falsely, fraudulently, in violation of its charter, and against the law of the land, did negotiate and sell the bonds, squandered the proceeds, and then refused to pay the interest on any part thereof, but suffered it to accumulate until the present time, whereby the said company has become inextricably involved in debt, totally without credit and without the means of making any part of the work which it undertook to make.

The plaintiffs object to the foregoing offer—

1st. Because the acts proposed to be proved are not acts of misuse or abuse within the meaning of those terms in the charter of the Pittsburgh and Connellsville Railroad Company.

2d. Because such acts are not complained of by the city of Pittsburgh and the county of Allegheny.

349 3d. Because the said acts are not stated as grounds for repealing said charter in the repealing act of 1864.

4th. Because some of the said acts were anterior to the date of the condoning act of 1856, and were remedied, if irregular, by the terms of that act.

Offer overruled per curiam.

Offer No. 5.

The defendants now offer to prove that the Pittsburgh and Connellsville Railroad Company did, prior to the act of 29th April, 1864, abuse and misuse its chartered privileges, in this, that the said company falsely, fraudulently, and illegally cheated the city of Pittsburgh and county of Allegheny out of the sum of one million two hundred and fifty thousand dollars in bonds, on which said company promised to pay the interest by negotiating and transferring said bonds, and then refusing to pay the interest, and also misapplying the proceeds of said bonds, to the great detriment of said city and county, and to the discredit of the Commonwealth, and this subsequent to the 11th of April, 1856.

The plaintiffs object to the foregoing offer—

1st. Because the acts alleged are not act of abuse or misuse within the meaning of the act of incorporation of the Pittsburgh and Connellsville Railroad Company.

2d. Because the acts alleged in the offer are not complained of by the city of Pittsburgh and the county of Allegheny.

3d. Because after the date of said act or alleged acts, the legislature of Pennsylvania have continued, by various acts now in evidence, and constituting supplements to the charter, to recognize the said company as an existing and legal corporation.

Offer overruled per curiam.

Offer No. 6.

The defendants now offer to prove that the Pittsburgh and Connellsville Railroad Company, prior to the act of 29th April,
350 1864, did misuse and abuse its franchises and privileges in this, that in the year 1861, or thereabouts, it failed and fraudulently refused to pay the interest on the bonds of the city of Pittsburgh and the county of Allegheny, and caused the whole burden of paying such interest to be thrown upon the said city and county, and in consequence thereof not only the said company became utterly without credit, but the said city and county became so embarrassed, that upon suits against them by the holders of said bonds, their stock in the said company was sold at marshal's sale for about one-sixth of one per cent. on their par value—the president of the said company buying in the said stock for the use of the Baltimore and Ohio Railroad Company, a foreign corporation.

The plaintiffs object to the foregoing offer—

1st. Because the acts proposed to be proved are not stated as grounds for repealing the charter in the repealing act of 1864.

2d. Because, if true, said acts could only be complained of by the city of Pittsburgh and county of Allegheny, who have not so complained, and who are not parties to this issue.

3d. Because, even if true, they are not such acts of abuse and misuse as come within the meaning of those terms in the charter of said company.

4th. Because said depreciation of the stock of the Pittsburgh and Connellsville Railroad Company, in the hands of the city of Pittsburgh and county of Allegheny, was owing to their failure to pay the interest upon their said bonds, as they were bound to do, by the terms of said bonds, to the holders thereof, independent of the contract between said corporation and the Pittsburgh and Connellsville Railroad Company.

Offer overruled per curiam.

Offer No. 7.

The defendants now offer to give in evidence the annual report of the plaintiffs prior to 1856, together with the annual accounts of their treasurer during the same period, for the purpose of
351 showing the state and condition of the plaintiffs' affairs prior to the act of 11th April, 1856, and enabling the jury to judge whether since that time the said plaintiffs have been guilty of any misuse or abuse of their privileges, according to their actual ability or according to their charter.

The plaintiffs object to the foregoing offer—

1st. Because there is nothing in the reports of the said company, prior to the report of 1856, stated in the repealing act of 1864, as grounds for the repeal of the charter of said company.

2d. Because the said reports contain nothing from which the jury could be legally permitted to find said company were guilty of any misuse or abuse of its privileges, within the meaning of those terms in the charter of said company prior to the 11th day of April, 1856.

3d. Because the offer is made to show facts occurring prior to the date of the condoning act of 1856, and is in disregard of the previous rulings of the court.

Offer overruled per curiam.

Offer No. 8.

The defendants now offer the annual report of treasurer's report for the year 1855, for the same purposes as stated in the offer No. 7.

Plaintiffs object for the same reasons as those stated to the previous offer.

Offer overruled per curiam.

Offer No. 9.

The defendants further to maintain the issue on their part, now renew their several offers heretofore made, to show acts of malfeasance and misfeasance such as amount to a misuse and abuse of corporate power and right prior to the so-called condoning act of 1856, and this renewed offer is now made in view of and in consequence of the additional proofs received since said offers were made, and expressly in view of the admission of the bill and answer and replication in evidence.

352 The plaintiffs object to the foregoing offer—

1st. Because the question as to the operation of the act of 11th April, 1856, in this connection which it raises has already been more than twice properly decided by the court.

2d. Because the said condoning act is to be construed independently of any evidence in pais, or of anything in the bill, answer, and replication.

3d. Because the said condoning act, curing all alleged acts of misuse or abuse prior to the 11th April, 1856, the only question under the issue now to be tried is whether the company misused or abused its charter within the meaning of the 20th section of the same since the date of the passage of said condoning act, and no evidence of any kind not bearing upon that issue is admissible.

Offer overruled per curiam.

The court adjourned.

TUESDAY, *June 26th.*

Court met.

The reports of the Pittsburgh and Connellsville Railroad Company from 1856 to the present time were then offered in evidence by the defendants.

Also the charter of the Connellsville and Southern Pennsylvania Railroad Company, with the statement that its capital stock is $10,000,000, which has been subscribed.

Also the pleadings in the case in equity.

The testimony ruled out as above is now again offered by the defendant's counsel in view of the present condition of the case.

This offer led to an argument with regard to the effect of the condoning act, in which the ground already taken by Judge Lowrie was reasserted and expanded by Mr. Cuyler and Judge Black, who were replied to by Mr. Johnson. In the course of his remarks Judge Black spoke of the Pittsburgh and Connellsville Railroad Company as "being covered over with infamy as with a garment."

The court (Judge McCandless) however adhered to its former decision that the proof of acts of misuse or abuse must be confined
353 to the period between the 11th April, 1856, the date of the condoning act, and the 29th April, 1864, the date of the repealing act.

The prices at which the stock of the Pittsburgh and Connellsville Railroad Company was sold at marshal's sale in Pittsburgh, under execution issued against the city for the non-payment of the interest on its bonds, were then given to the jury.

Mr. R. B. Lewis, a witness on the part of the defendants, examined in chief:

Is a civil engineer by profession; in the employment of the Connellsville and Southern Pennsylvania Railroad Company, and made a location for that company from Connellsville eastward; which was described. The company adopted the location in 1865. It passes by Dieter's Gap and not the Sand Patch.

Cross-examined:

Made a location for the road down Castleman's river; saw the stakes of the Pittsburgh and Connellsville railroad on the route. Had not been himself on every part of the ground to be occupied. Saw stakes of the Pittsburgh and Connellsville road at Brook's summit and at other points. Cannot say for what distance there is an actual coincidence. At Pemberton Point the one location covers the other exactly. The route of the Connellsville and Southern Pennsylvania was adopted from Connellsville to three miles east of Buffalo creek, fifty-four miles. Located one line from Buffalo creek to the Sand Patch tunnel; three miles of which is on the map. The Sand Patch is twenty-two miles from Cumberland, and Cumberland is nine miles from the Maryland line. The grades at Dieter's gap are one hundred and five feet to the mile. The valley of Castleman's river is very narrow. In a spirit of mutual accommodation two lines of railroads, with a double track each, might be constructed on the same side. Buffalo creek is four miles below the Sand Patch.

No part of the Connellsville and Southern Pennsylvania railroad has been constructed.

354 Re-examined in chief:

If the first line of road were constructed wantonly along Castleman's river it would be difficult to build a second without great cost. The witness then continued explanations about the location.

Defendants here closed their testimony and the counsel went before the jury.

355 THE MAYOR AND CITY COUNCIL of Baltimore
vs.
THE CONN. & SOUTH. PENN'A R. W. Company, The Pitts. & Conn. R. R. Company.

CITY OF PITTSBURGH, *ss:*

Personally before me, an alderman of said city, came W. O. Hughart, who being duly sworn, deposes and says:

That he is the president of the Pittsburgh and Connellsville Railroad Company, respondents in the above case, and that the appeal taken by the said company from the decree of the circuit court of the United States for the western district of Pennsylvania, to the Supreme Court of the United States, is not taken for the sake or purposes of delay; and further saith not.

W. O. HUGHART,
President.

Sworn and subscribed to before me, this 11th day of Dec'r, A. D. 1866.

A. NICHOLSON, *Ald.*

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357 In the circuit court of the United States, western district of Pennsylvania.

THE MAYOR, ALDERMEN, and CITIZENS of Baltimore
vs.
THE CONNELLSVILLE & SOUTHERN PENN'A Railway Co. *et al.*

Be it known, that on this twenty-fourth day of November, A. D. 1866, before me, a commissioner of the United States, in the city of Philadelphia, personally came John A. Wright, president of the Connellsville & Southern Pennsylvania Railway Company, who being duly sworn by me, doth depose and say, that he takes appeal on behalf of said railway company, from the final decree in the above-named case, not for the purpose of de'ay, but because he verily that injustice has been done by the said to the said defendant.

JOHN A. WRIGHT.

Sworn to and subscribed before me, this 24th day of November, 1866.

CHARLES SERGEANT,
United States Commissioner in and for the Eastern District of Pennsylvania.

[5-cent rev. stamp.]

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359 C. C. U. S. at Williamsport, June 22, '66.

MAYOR & CITY COUNCILS OF BALT.
vs.
CONN. & SOUTHERN P. R. C. } No. 90, Nov'r T., 1866.

Notes of evidence by Mr. Roddy for def't.

Feigned issue to try the fact whether or not the Pittsburg & Conn. Railway Co. has misused or abused its corporate privileges.

Evidence.

Act of assembly read.
Ordinances of the city of Baltimore of 1853–'6 and '8.

Mortgage.

Mortgage dated 4 August, 1856, from Conn'l Railway Co., to C. M. Keyser and R. C. Wright, trustees of the city of Baltimore, to secure said city for the indorsement for one million of dollars worth of bonds of said Co., said mortgage conveys to said city of Balt. all the real and personal estate of said Co., also all rights, priv's, tolls, franchises, &c.

360 Benjamin H. Latrobe sworn:

Became connected with Co. as pres't 1 July, 1856; resident of city of Balt. in State of Md. Knew the city indorsed bonds for 1 million; subsequently changed for bonds of city; bonds of city were delivered from time to time as Co. ret'd their bonds cancelled; city executed in 1853 and 1856 two mortgages, the one in 1856 was after I became pres't, and duly recorded; mortgage bonds were to be expended in construction of road; road in operation from W. N. to Conn., 25 miles, and under contract to Turtle creek; rolling stock sufficient to acc. the travel in connection with the slack water; was opened to T. creek in Jan'y, 1857; 23 miles in addition, or 48 miles in all; connected at that point with Pa. C. R., and her locomotives carried cars to Pitts.; road was commenced from Turtle creek to city of Pitts.; city of Balt. was appealed to release her mortgage on that part of the road to give a first mortgage to parties to build road. City councils authorized the release of mortgage to build road, and passed on ordinance to that effect; $400,000 worth of bonds used in construction of road; bonds negotiated in Pittsburg and Phil'a; great difficulty occurred in negotiating the bonds; sold a small portion of bonds exchanged for iron in Phil.; $40 or 50,000 sold in Pittsburg; the rest paid out as money for construction.

361 Was completed in 1861, and connected with the Uniontown road. One mile road completed east of Connellsville by Fayette Co., and then paid by us. In 1st part of 1863, Co. had 12 engines and had not sufficient means to equip the road with cars. The road increased very rapidly after its completion to Pittsburg. Revenues in '61, $70,000; in 1864, 316,000; in Nov. '65, $400,000 less $5,000. In spring of 1862, applications made to Congress for an indorsement of bonds unsuccessful.

Company made efforts to get ass. from western roads and Balt. roads—by myself and superintendents efforts were made.

I become prest. in 1856, and the city of Baltimore requested to take it by finance com. Co. had a floating debt of $680,000. City provided for the payment of floating debt (interalia) and the road completed to Cumberland at an early day. Ordinances provided for the completion of whole work. Was to enable Co. to complete work by waiving her priority of first mortgage and give first mtg. to party to complete it. Acted under advice of board of directors. Consulted with Mr. Clark and Mr. Peabody of London—he said it could not be done—in 1856 (latter part) money was worth

362 more in England than here, and bonds could not be sold. We were conducting the work on the Sand Patch tunnel during all this time. 1 mil. had been expended and we spent about another million on the tunnel. Company had bonds of Allegany county, originally $750,000; about one-half had been disposed of in 1857. All of the bonds of the city of Pittsburg had been disposed of before I become prest., amt. $500,000. Were selling bonds and taking up notes. At that time all the means of the Co. were in a state of negotiation—bonds and pledged. Work suspended in Oct., 1857. Int. on Balt. city bonds were paid up. Directors incurred personal lia-

384 B. H. Latrobe, recalled:

I remember in '60 and '61 I recommended the city councils of Balt. to purchase the Pittsburg and Allegany county stock; made the request as director; in '60 was authorized by councils to make the purchase. The mayor vetoed the ordinance, sale postponed; city refused to purchase. I submitted the case to Mr. Garrett, who authorized me to make the purchase, which was done. The city stock was purchased at market price. Cumberland city's subscription was to be made on the condition of the erection of depot buildings in city, and to be expended on the work in the State of Maryland, altho' it formed a part of the subscription, upon the faith of which Baltimore made her subscription. Letter of Sept. 25, 1860, identified and proven. A traced map from the one exhibited was made under my direction; it was verified by my seal and that of the co. Am familiar with this route; surveyed it in 1837. Castleman is a tributary of the Yough; Laurel Hill creek do.; ridge at tunnel is called Allegany summit on Wills creek, down Wills creek to Bedford county. Under ordinance of 1853 bonds of co. indorsed by city were to be sold at par—could not be sold, were hypothecated; had a change made in the ordinance, and bonds exchanged as fast as bonds
385 were sold. Company took them; issued coupon bonds and exchanged them for stock, and the stock was sold; $266,000 and 383,000 are both part of the million; a part, being inscribed stock, was hypothecated; the bonds were surrendered to city, and she gave hers in place thereof. County coms. of Allegany agreed that the bonds should be sold at 70 cts.; sold at 78 13-100 per cent. from beginning; authorized to sell; was previous to 1855.

W. O. Hughart, recalled in chief:

$5,000 of Manufacturers and Farmers' Bank came from Larimer. This report sums up every dollar expended in the various reports. See that for 1864, p. 37.

Total discount, &c	$514,863 37
interest paid	496,164 85

386 Sigismond Lowe again for pl'ff:

Made map in 1854; some changes in 1857. This I made on a reduced scale—$\frac{1}{3}$ less; it is from Turkey Foot to Cumberland.

From Cumb'd to the Turkey Foot 36 m., air line.

The Sand Patch tunnel does not lie east of the water-shed of the country. A little spring, 1½ miles from Sand Patch, runs into the Flaugherty creek. The Sand Patch tunnel is the nearest water-shed.

B. H. Latrobe again for pl'ff:

There was an agreement with Balt. that we sh'd make one mile at the Cumb'd end for 2 at the other. That was waived, but not in writing. City accepted. The work done upon tunnel was suspended on tunnel in Oct., 1857. About $200,000 expended in construction

and buildings of tunnel and approaches; about $16,000 expended within the last year. Work progressing moderately. Object in working at tunnel is to have it in such condition as not to retard the general work; is being made as part of a through road from Pittsburg to Cumberland; fact admitted. The Monteveu road is only projected. Know the topography of that country well; commenced surveying a route there in 1837 for the Balt. and O. road.

387 B. H. Latrobe cont'd:

The direction of Castleman river is east of north of Meyers' Mills.

B. F. Chanler, sw.:

I am chief clerk in State dep't; have been over 20 years. Have map of Pittsburg and Connellsville roads' location; I produce it from the records of the State department; was filed 15th August, 1865; (map ex. to jury;) record shows a filing of one 20th Jan'y, 1857; book labelled State roads; map cannot be found upon diligent search. Records moved once or twice, besides the time of Lee's invasion; one box is lost; entry read, and marked 21, headed drafts of railroads and canals, on page 59. The entry is in my handwriting; have no recollection of its filing beyond the filing. Gen'l Russell made inquiry for it by Gen'l Russell; inquiry made shortly before the filing of the map; entry made at the time it bears date; made diligent search before writing to Judge Lowry would not have made.

388 Gen'l Russell recalled:

As an officer of the co. filed the map in 1857, or mailed it to be filed; saw it there afterwards; made inquiry about one year ago for map, and could not find it; so informed them. This was sent, but was returned for want of certificate; can't tell whether they were alike or not; they professed to be. Mr. Barnes's map was engraved.

Mr. S. Lowe recalled:

Have been engineer from 1853; map filed in 1857, map identical with the one exhibited, but on a reduced scale. Final location made in 1857 of lines as made in 1853, 1854, and 1855; the whole located in 1854; line redressed in 1857; was same location. No change after 1854 of line except grades.

Minute book of company admitted, showing the adoption of route, &c.

389 Mr. B. H. Latrobe recalled in chief:

Board of directors adopted a route; was not staked out finally in 1856 to Cumberland; was adopted by the co.; can't state the time; two or three years after located; was adopted by the co. before putting under contract; was by sections; never departed from by co.

Was staked out in 1856, afterwards approved, and is now the only route we claim.

390 MONDAY, *June* 25, 1866.

Judge Lowry opens for def'ts. Offers—

1st. Annual report 1847, to show No. of share of stock held by co., page 4, whole No. 7,747. Objec'd to and sustained by the court on the ground that the act of 11th April, 1856, condoned everything previous to that date.—3 Casey, 351, Erie case.

Letters patent, dated 11th June, 1846.

391 Admitted by agreement of counsel "that the stock subscribed by the city of Pittsburg and by the county of Allegany, was paid for in the bonds of the said parties with coupons attached, which coupons the said P. and C. R. R. Co. contracted, should be paid by said co. as they fell due; and that many suits were brought and judg'ts obtained against said city and county respectively, and enforced by execution. The city, county, and the said railroad co. having failed to pay the interest.

"Also the printed annual reports of the P. and C. R. R. Co., so far as relevant."

Abstract of marshal's sale of stock in the Pittsburg and Conn. R. R. Co., sold, viz:

JAMES ENGLEHART *vs.* THE CITY OF PITTSBURG. } Fi. fa. No. 16, May T., 1861. Original suit No. 20 of May term, 1860.

Debt $1,168 82.

100	shares of P. and C. stock, sold M. Howley, at 8 cts....	$8 00
200	shares of P. and C. stock, sold M. Howley, at 16 cts...	32 00
100	shares of P. and C. stock, sold M. Howley, at 7 cts....	7 00
100	shares of P. and C. stock, sold J. E. Downing, at 8 cts.	8 00
1,000	shares of P. and C. stock, sold J. F. Loyd, at 6 cts...	60 00
100	shares of P. and C. stock, sold J. F. Loyd, at 7 cts....	7 00
1,200	shares of P. and C. stock, sold C. B. Seely, at 8 cts...	96 00
1,000	shares of P. and C. stock, sold W. A. Caldwell, at 8 cts.	80 00
5,400	shares of P. and C. stock, sold J. H. Sewell, at 6 cts...	324 00
300	shares of P. and C. stock, sold M. O'Harah, at 12 cts.	36 00
9,500		658 00

392 R. B. Lewis, con.:

No part of Conn. and S. P. railroad is completed. Castleman's valley narrow and crooked. Think two double tracks can be made there, except in one or two instances.

Mr. Latrobe says, Pinkerton point about 30 or 32, miles from Connellsville—about 32 miles.

In chief:

Thinks it would be more expensive to build the second line than the first line—practicable to do so, but would be attended with more expense on ac't of cros ing the river.